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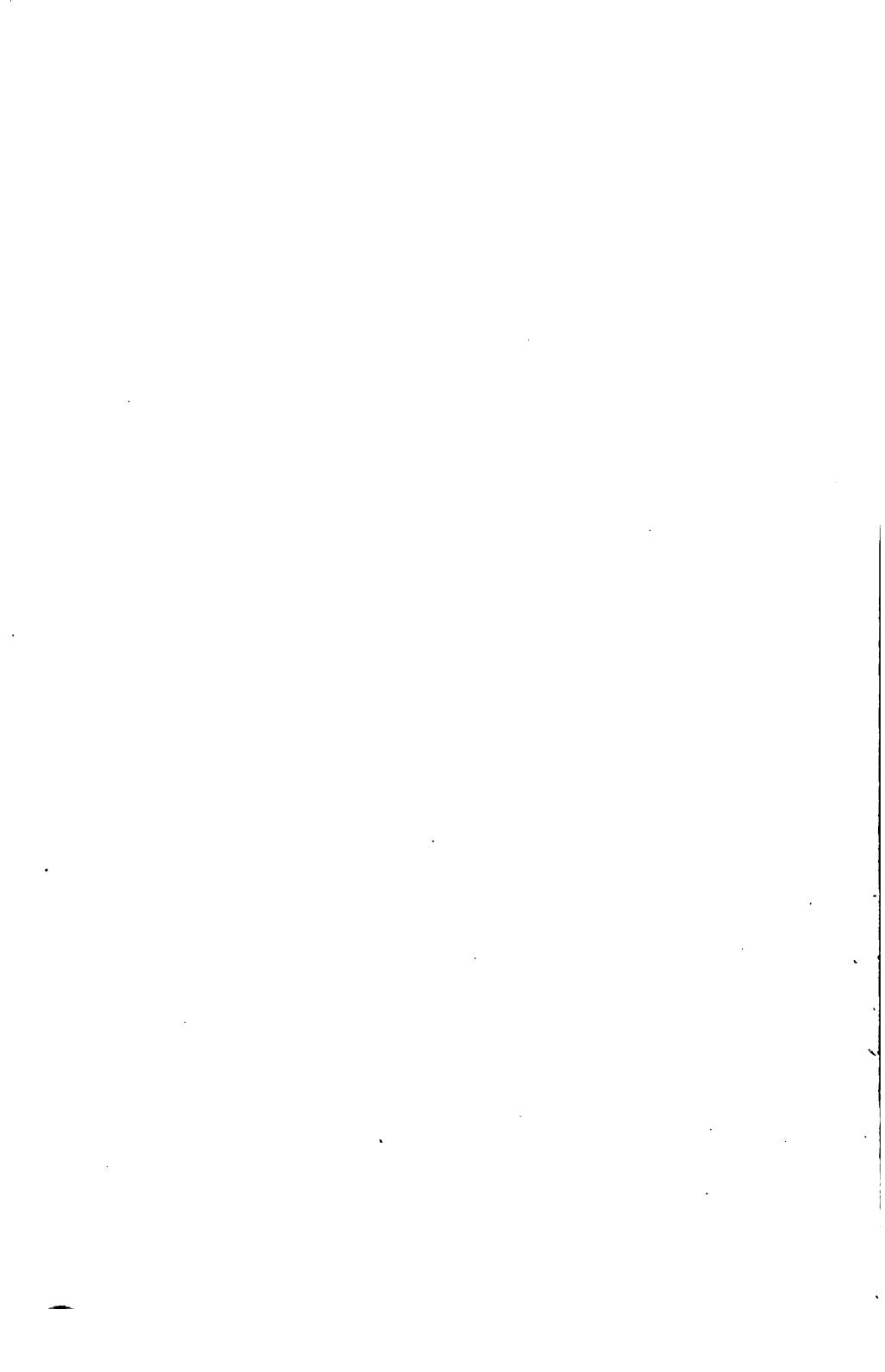


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**"TRUTH IS STRANGER THAN FICTION."**

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# **THE GREAT MATLOCK WILL CASE,**

**CRESSWELL v. JACKSON.**

TRIED BEFORE THE LORD CHIEF JUSTICE OF ENGLAND, AND A SPECIAL JURY  
OF THE CITY OF LONDON, BY ORDER OF THE HOUSE OF LORDS.

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"The common saying that "Truth is stranger than fiction," is often illustrated by the disclosures of our law courts, but seldom in so remarkable and suggestive a manner as by the great Will case which terminated yesterday in a verdict for the Defendants."—*Times*, March 2nd, 1864.

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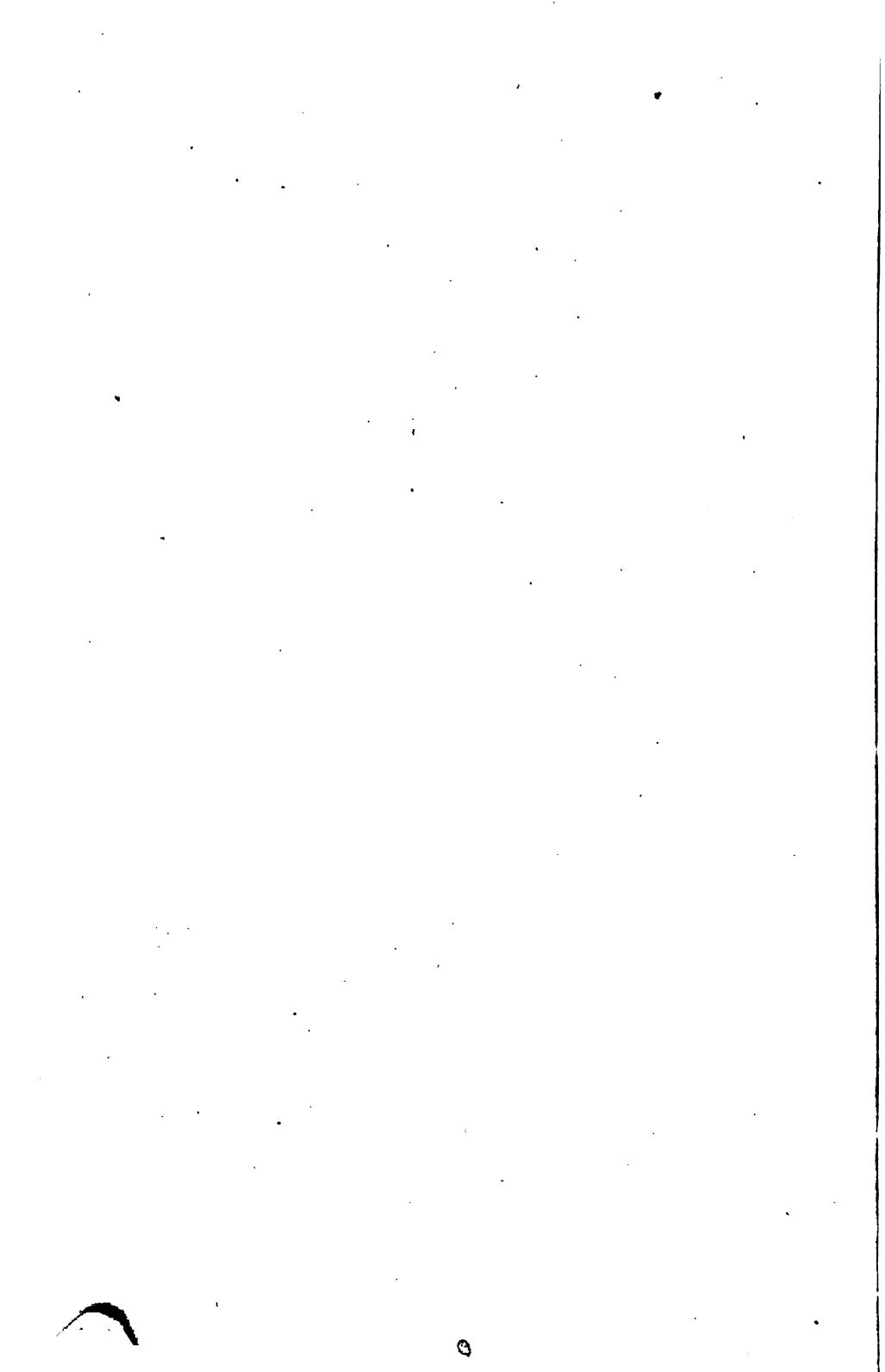
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*IN THE QUEEN'S BENCH.*

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BETWEEN

ROBERT CRESSWELL (since deceased) } PLAINTIFFS.  
JOHN MARRIOTT, & JOHN ELSE, }

*and*

CHARLES WAKEFIELD JACKSON } DEFENDANTS.  
and GEORGE SHAW, }

*Counsel for the Plaintiffs :*

Mr. KARSLAKE, Q.C., Mr. FIELD, Q.C., and Mr. HANNEN.

*Attorneys for the Plaintiffs :*

Messrs. UPTON, JOHNSON, & UPTON, Austin Friars, London.

*Counsel for the Defendants :*

Mr. Serjeant HAYES, Mr. Serjeant BALLANTINE, and Mr. WILLS.

*Attorneys for the Defendants :*

Messrs. DREW and WILKINSON, 151, Bermondsey Street, London, and  
Great Queen Street, Westminster, and MICHAEL JESSOP, Esq., of Crich,  
Derbyshire.

# THE GREAT MATLOCK WILL CASE.

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*(Sitting at Nisi Prius, after Hilary Term, 1864, at Guild-hall, before the LORD CHIEF JUSTICE and a Special Jury.)*

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## CRESSWELL AND OTHERS V. JACKSON AND ANOTHER.

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THIS, which will be known hereafter as the great Derbyshire will case, came on for its third trial by order of the House of Lords, and is certainly, whether with regard to its own circumstances or the litigation, both at law and equity, which it has involved, one of the most remarkable that ever has been known. It relates to the validity of certain alleged codicils to the will of a person named George Nuttall, who died at Matlock on the 7th of March, 1856. His will left most of his real estate to one John Nuttall, who died soon after him. These codicils, three of them, were said to have been afterwards found, one after the other, at different times, during the subsequent 18 months, and their effect was to give most of the real estate thus bestowed on John Nuttall and his children, to two other persons, chiefly one John Else and Catherine Marsden. The validity of the codicils was disputed, and a suit was instituted in Chancery to establish them. An issue was directed by the Master of the Rolls to determine their validity or invalidity by the verdict of a jury, and that issue came on to be tried in 1859, at the Summer Assizes for Derby, before Lord Chief Justice ERLE and a special jury. The case on the part of the opponents of the codicils—those who took the chief real estate under the will—was that they were forgeries. The jury, found however, in favour of those who set up the codicils. The Master of the Rolls, not satisfied, directed a second trial of the issue before the Lord Chief Baron at the Spring Assizes for Derby, 1860, and the jury then found a verdict against the validity of the codicils. With this verdict the Master of the Rolls was satisfied, and he refused a new trial. Then there was an appeal to the Lords Justices, who were equally divided. Then there was an appeal to the House of Lords, who ultimately decided in favour of a new trial, and appointed it to take place in London before the Lord Chief Justice of England and a special jury of the city of London. Thus the case came on for the third time for trial after years of previous litigation, both at law and in equity, and it may easily be conceived that the questions thus obstinately litigated, both

with regard to the amount of property at stake, and still more, with regard to the grave questions of a criminal character also involved in the case, are of no ordinary importance. A case of this kind always has a story, the knowledge of which is essential to anything like an understanding of the case as it proceeds through what probably may be a protracted trial, and the sooner that story is told to the reader the better, as it makes all that follows intelligible. Certainly, never was there a story more remarkable in all its circumstances.

The testator, George Nuttall, lived all his life at Matlock, and he died there in March, 1856, at the age of 54, a bachelor, and possessed of a considerable estate, both real and personal. He had, it would seem, a businesslike mind; he was a land surveyor, and had been for many years in good practice; he was very intelligent—a man, if not educated, at all events, by no means illiterate, and beyond all doubt, as was admitted on both sides, an excellent man of business. It was, on the other hand, admitted on both sides that he was somewhat close and reserved in his habits, and led a rather retired life. He had no near relations, and does not appear to have been on terms of much intimacy with such as he had. His nearest relations were cousins, and, of these, one (Catherine Marsden) had lived with him as housekeeper for many years, and was living with him in that capacity at the time of his death. One of her sisters was married to John Else (the principal plaintiff and appellant), who lived at Matlock, where he was assistant-overseer and also bailiff of the County Court. He was occasionally employed by the testator in copying accounts and collecting rents, and wrote a hand not unlike his, though distinguishable. A Mr. Newbold (now dead) was the testator's attorney, and was on friendly terms with him. Among his neighbours were one Job Knowles, a farmer, and a Mr. Adams, a surgeon (now dead), both of whom occasionally visited him. He had a cousin named John Nuttall, who was a foreman to a London contractor, and seems to have been a respectable person, with a family of several young children. At the time of the death of the testator his real estate was worth between 2000*l.* and 3000*l.* a year, part of which was a quarry, let to Job Knowles and Sir Joseph Paxton. His personality was sworn under 10,000*l.* Such were his circumstances at the time of his will and of his death. His will (the validity of which, it will be observed, is not disputed, though it is said to have been revoked or altered by subsequent codicils) was made in September, 1854. It was prepared by Mr. Newbold, but copied in duplicate by the testator, and both copies were duly executed. Thus, there were two copies of his will, both entirely in his handwriting, and both in his possession, and one of them appears to have been kept in a cupboard in his bedroom. The effect of the will was to make his cousin John Nuttall residuary devisee of the bulk of the real estate. The furniture and effects were left to Catherine Marsden, and his dwelling-house, with an annuity, and also a house occupied by Else, were likewise left to her. An interest in certain tithes was left to Else. The right of working a quarry was given to Job Knowles for life, subject to a lease under which he already held it jointly with Sir Joseph Paxton. The residuary personality was divided among a great many persons. The residuary real estate was left absolutely to Mr. John Nuttall. Such being the will, (which it must be borne in mind, was admitted to be

genuine), the testator, as already mentioned, does not appear to have mentioned to his attorney anything about any alteration of it, by codicils or otherwise, down to the time of his death. He died, as above stated, on the 7th of March, and had been ill some time before. On the Sunday before his death—*i. e.*, on the 2nd of March, occurred an incident on which both sides relied, and which affords a curious illustration of the different way in which the same thing may be made to look, according to the view taken of it. The undoubted fact is that on that day he had a conversation with his attorney, Mr. Newbold, and desired his attendance next day, and on that day (the Monday), when he was very much worse and in a state of unconsciousness with short intervals of reason, he showed a great anxiety to get at the cupboard in which his will was kept, but he was unable to speak; and when, in deference to his evident anxiety about it, he was lifted out of bed and taken to the cupboard, he was too weak to unlock it, or to do or say anything, and thus the object with which he went to the cupboard was left uncertain, and could only be surmised. The incident is pressed into the service of each side in this way:—On one side it is suggested that he was anxious to get at the will in order to cancel or alter it, or allude to the codicils. On the other side it is suggested that he desired to get it in order to acknowledge it as his last and unaltered will. Whatever his purpose was, it could never be made known by himself; for from that time he sunk into unconsciousness and remained in that state until his death, shortly after which the cupboard was opened and one copy of the will was found. Upon the will thus first found not the least suspicion rests. It is what is called a “holograph”—that is, wholly in the writing of the testator, and it was attested by two of the attorney's clerks. It should be stated that it contains several instances of mis-spelling—“debt” for “depth,” “oweing” for owing,” &c., and “surgeon” for “surgeon.” This is material, as a good deal is made of mis-spelling in the codicils. Between the days of the death and the funeral, Job Knowles was heard to say “there was something else,” and a further search being made the other copy of the will was found in the same cupboard. This, likewise, was entirely in the handwriting of the testator, and duly executed and attested, and was, indeed, a duplicate of the other, but in the middle of a bequest of some property to a person named Elizabeth Sheldon (now Mrs. Ashworth) there was an interlineation (printed in brackets), thus:—  
The estate is given to Elizabeth Sheldon

“For life, for her own separate use and benefit [subject to the yearly payment of 100*l.* to the before-mentioned John Else, and 50*l.* yearly to my housekeeper, Cath. Marsden,] free from the debts, control, and engagements of her present or any future husband.”

This interlineation is the first of the four forgeries imputed, but as it was not included in the inquiry directed by the Court of Chancery the opinion of the juries who have tried the case has not been taken upon it. On the day of the funeral, when this second copy of the will was found, John Nuttall, the principal devisee under it, was at the house, and he does not appear to have raised any objection to this interlineation in it; on the contrary, he carried to the house of Else a variety of papers, which appeared to be of no importance. It is a remarkable circumstance that he did not long survive his good fortune, and died on the 12th of April, 1856, by his

will devising his property, in trust for his infant children, to the principal defendants. On the 21st of April, 1856, less than a fortnight after his death, Else produced to Newbold the first of the three disputed codicils, dated the 27th of October, 1855, which he said he had found among the papers, along with an epitome or abstract of the will. This codicil purported to be attested by two labourers named Buxton and Gregory, and it was mainly in favour of Else and Catherine Marsden, making him also an executor. It revoked the devise of the properties bequeathed to Miss Sheldon, and devised them to Else. It purported to be holograph—that is, to be written throughout by the testator; but those who impugn it assert that the handwriting is different, and further that it betrays a habit of spelling, or rather of mis-spelling, quite unlike that of the testator. This will would be as to all the codicils a main feature in the case. It is urged against the genuineness of the codicils that they abound in gross blunders of orthography, whereas there are none such in the will, although there are, it is admitted, one or two minor inaccuracies even in that. Thus in the first codicil the following blunders are particularly insisted on:—"Codicel" for codicil (three times), "hears" for heirs, "doughter" for daughter, "executers" for executors, "conferm" for confirm. The Christian name Clifford, also, is spelt "Clifferd," and in the attestation clause the document is stated to have been executed "in the presences of us." But the main reliance on this part of the case is placed on the spelling of the word "daughter," as to which it is contended that whereas the testator never spelt it wrongly, in the codicils it is never spelt rightly; and other documents written by Else are relied on, in which there is the same habit of spelling as regards this word. In these, as in the codicils, it is said it is always spelt "doughter," except in one instance in which it was spelt "dughter." Evidence as to habit of spelling words is, it must be observed, altogether different from evidence of mere handwriting, although there will, no doubt, be a great deal of evidence also as to that. Such, however, being the nature of the case as to the first codicil (which, it will be noted, was produced a few days after the death of John Nuttall, the principal devisee under the will,) the second codicil was produced eight months afterwards. This also, like the former, was found by John Else, and was likewise, like the first, in his favour. He professed to have found it on the 16th of December, 1856, in a little penny account book which had belonged to the testator, pinned on to one of the leaves. This codicil was dated the 6th of January, 1856; it was attested by Adams and Knowles; it gave a large estate at Matlock—which, by the will, went to John Nuttall—to Else, subject to an annuity to Knowles's son, and it gave considerable other property to Else, with an annuity to Catherine Marsden's mother. Except this annuity and another (both of which soon dropped) and the bequest to Knowles's son, the codicil was, in fact, entirely in favour of Else, the finder. The mis-spellings in this codicil relied upon by those who impugn it are the following:—"Contiguaes" for contiguous, "annexd" for annexed, "immediatley" for immediately, "numbred" for numbered, "assigues" for assigns, "commuation" for commutation (twice,) "tith" for tithe, "prensence" for presence; all which words, it is said, are correctly spelt in the will. Suspicions were now excited in the minds of the trustees; but still they did not assume the responsibility of disputing these

codicils, and they both for the time passed unquestioned. After the lapse of nine or ten months a third codicil was brought forward, on the 9th of October, 1857. It was dated the 12th January, 1856, six days after the second, and it will be observed that the three were all found in the order of time in which they are dated. The account of the finding of this codicil was as follows:—It appeared that Else, soon after the testator's death, took up his residence at the testator's house, Catherine Marsden, the house-keeper, to whom it had been devised for life, having left it. At the back of the house was a court, on one side of which was a flight of 10 or 12 stone steps in the open air, leading up to a hayloft, at the farther end of which was a small room, used as a work or lumber room. The statement made by Else was that, the window of the lumber room being in want of cleaning, he ordered a boy named Champion to clean it; that the boy being short, and the window high, he (Else) laid hold of the window-sill to raise himself up so as to open the window; that the window board gave way and was pulled out, and disclosed a small hole in the wall, in which was a small common jar of brown earthenware; that the boy called his attention to the jar, and on looking into it he found a canvas bag with 20 sovereigns and the third codicil in it. The boy confirmed this story as to the finding of the jar and its contents; but, on the other hand, said he had seen Else there a day or two before, and that the window was not cleaned. It will be observed that the date of this codicil was the 12th of January, 1856, less than two months before the death of the testator, who for several months before had been very severely afflicted with an abcess on his back. This codicil, like the second, was attested by Knowles and Adams; it also purported to be holograph, and the handwriting was like that of the other two codicils, but it is said to be unlike that of the will, as to which—as all the documents have been photographed, and the originals will be produced—the jury can judge for themselves. The effect of the codicil also, like that of the other, is in favour of Else. It revoked entirely the residuary devise in the will of John Nuttall, and substituted Else as residuary devisee (with one exception.) In short, the result of the three codicils, taken together, is in substance, so far as regards the realty, to substitute Else for John Nuttall, and give him the bulk of it. They were now disputed by the trustees on behalf of John Nuttall's family, and in the result the Master of the Rolls, in July, 1859, directed an issue to try the validity of the codicils before a Jury. That issue was tried before Lord Chief Justice Erle at Derby in August that year, and the trial took two days. The jury found the codicils valid, but the Master of the Rolls granted a new trial, on the ground that sufficient attention had not been directed to the abstract or the epitome of the will alleged to have been found with the first codicil. The genuineness of this had, it should seem, been rather assumed at the first trial, whereas further scrutiny elicited certain circumstances on which the opponents of the codicils relied strongly, and which the Master of the Rolls deemed to require further inquiry. Thus, it omitted all mention of the two legacies contained in the interlineation in the second copy of the will; it used the word "remainder" in a sense quite different from the proper sense in which it is used in the will; and it was found in an envelope endorsed "This is my right will" (*sic.*) These points were pressed forcibly before the jury on the second trial, which took place before the Lord Chief

Baron at the Derby Spring Assizes, 1860, when certain new evidence was adduced, and after three days' trial the jury found that all three codicils were fabricated. On this occasion the jury, on retiring to consult, were allowed to take with them the original will and the codicils, in order to compare them together, which had not been allowed on the first trial. The Master of the Rolls and the Lord Chief Baron were both satisfied with the verdict, and a new trial was therefore refused. On appeal to the Lords Justices they were divided in opinion, Lord Justice Knight Bruce being against a new trial, Lord Justice Turner in favour of it, and wishing it to be before the Lord Chief Justice and a special jury of London. Then, on appeal to the House of Lords, that latter opinion was adopted, and a new trial directed to take place before the Lord Chief Justice of England and a special jury of the city of London, and so the case now came on to be tried to-day having been specially appointed for the purpose.

Mr. KARSLAKE, Q.C., Mr. FIELD, Q.C., and Mr. HANNEN were for the plaintiffs—that is, in reality for Else, the principal party interested in setting up the disputed codicils; Mr. Serjeant HAYES, Mr. Serjeant BALLANTINE and Mr. WILLS were for the defendants—that is, the executors and trustees under the will of John Nuttall, the residuary devisee under the will of the testator, representing substantially the widow and infant children of John Nuttall, and, of course, interested in disputing the codicils.

It will be observed that Mr. Adams, the surgeon, and Mr. Newbold, the attorney, had, unfortunately, died since the last trial.

## FIRST DAY, MONDAY, FEBRUARY 22nd.

Mr. KARSLAKE, in opening the case to the jury, said that although their experience of will cases might lead them to anticipate a dull and unromantic story, and that the first portion of his own statement of facts might seem to show that the present was no exception to the rule, yet before he had closed the plaintiffs' case they would readily admit that this was one of the most curious and interesting trials that had ever taken place. The question would be between the direct positive testimony of four witnesses (two of them entirely unimpeachable) on one side, and on the other, casual difficulties and improbabilities which the defendants could discover, the testimony of lithographers and experts, and comments upon the circumstances (certainly sufficient remarkable) which their counsel would make. Two of the four witnesses of whom he had spoken would be hostile, and would be examined, therefore as "adverse." He should call before the jury the four attesting witnesses of these codicils, at least with the exception of one (Dr. Adams) who had since died, but whose deposition to them at the last trial would be read, and they would solemnly swear upon their oaths to their own handwriting at the foot of the codicils as well as to the signature of the testator. The case, however, of the defendants was that these four attesting witnesses were guilty, together with John Else, and he really did not know how many more, of perjury, forgery, conspiracy, and fraud, and his learned friend (Serjeant Hayes) would put forward various insinuations, suppositions, and surmises, but he hoped and trusted in the intelligence of

the jury, and that they would believe the sworn positive testimony of four unimpeachable witnesses to the fanciful conjectures of the other side.

After the usual formal evidence and the putting in of the will dated 15th of September, 1854, the first codicil, 27th of October, 1855, the second codicil, 6th of January, 1856, and third codicil, 12th of January, 1856 (all of which were produced from the Probate Court), the first witness called was the labourer, Gregory, whose signature was to the first codicil as attesting witness. He was one of the two witnesses to whom the learned counsel for the plaintiffs had alluded as necessary, but adverse witnesses (a party setting up a testamentary paper being bound to call the attesting witnesses), and he was accordingly examined by MR. FIELD, Q.C., on the part of the plaintiff as an "adverse" witness—that is, in effect, his examination was a cross-examination. It was with great difficulty any facts were elicited from him. He said he had been 30 years in the testator's employment as gardener, &c., and was once sent for, with Buxton, to his room, where they were asked to "sign their hands to something," and did so. But he said the testator did not sign anything in their presence (which is necessary in the execution of a testamentary paper), though he said the ink on the bottom of the paper was wet. This evidence, therefore, as he thus gave it, it will be seen, fell short of proving an attestation. He was pressed as to whether he had not told Mr. Newbold that he saw the testator sign the paper. As to this he said he "did not recollect," and he almost invariably gave a similar answer to any further questions on any material point. He admitted he was at Mr. Newbold's office, and was asked questions about it, but he said he "could not recollect what." He was pressed as to certain things he was suggested to have said to Else—for instance, as to some one having offered him 100*l.* to give false evidence in the case. As to this, also, he said "he did not think he could have said so;" "he did not know;" "he did not recollect," &c.; upon which

THE LORD CHIEF JUSTICE observed, with some indignation, that the witness must surely know whether he had been offered 100*l.* to give false evidence.

The witness, however, repeated similar answers; and at last, in answer to one question, said, "he was no scholar!"

THE LORD CHIEF JUSTICE.—No scholar! Do you think we are such fools as to suppose that scholarship has anything to do with recollection, and recollection of matters like these?

The witness still went on giving similar answers. He was asked a great deal as to suggested propositions on his part to Else, and Else's having angrily told him to be off, &c., all which he said he could not recollect, &c.

The witness was then cross-examined by MR. SERJEANT HAYES, and it was elicited that after the death of his master, the testator, he was employed by Else, but had quarrelled with him as to some trifling matter. Asked as to whether Else had not given him 20*l.*, he admitted that he had, "a sovereign or two at a time."

THE LORD CHIEF JUSTICE (who, in the meantime, had got the witness's examination at the former trials). What did he give it you for?

The witness was silent for some time.

THE LORD CHIEF JUSTICE.—Come, out with it. You know you have stated it before; and you can scarcely have forgotten it.

The witness was still silent.

The LORD CHIEF JUSTICE pressed him in vain for an answer.

Mr. Serjeant HAYES likewise essayed in vain to elicit an answer. At last he read the witness's former answer to the same question. "He (Else) said I had as much right to it as the Marsdens," or, according to another version of it, "as Catherine Marsden," the housekeeper. Asked if that was true, he recurred to his former answers,—he did not recollect, &c. In short, it was "*non mi recordo*" over and over again, until every one was wearied with hearing it. Owing to the hesitation of the witness, his examination occupied a long time, and at its close

The LORD CHIEF JUSTICE, who had repeatedly expressed his indignation at the manner in which the witness gave his evidence (or rather did not give it), desired him not to leave the court.

The examination of Mr. Adams, the surgeon whose name, with Mr. Job Knowles, appeared as attesting the second and third codicils, was then read, he having died since the last trial. He said he was present when the testator signed a paper, and he and Knowles signed it as witnesses. He did not know what it was. He had said that he had heard that testator intended to alter his will. He had signed papers with the testator on the 6th and 12th of January, 1856.

Mr. Job Knowles was then examined by Mr. KARSLAKE on behalf of the plaintiffs.—He had known the testator, he said, for years, and he knew Catherine Marsden, who lived with him, and who took her meals sometimes with the testator. He lived only a quarter of a mile from the testator, and often visited him. The summer before his death he gave witness a packet to take care of, and told him it was his will, and he afterwards asked for it back again, in order, he said, to alter it. On the 6th of January, 1856, the witness said he was at the testator's with Mr. Adams, and both of them witnessed his signature to a paper. He was there four hours, and was there before Adams came, and meanwhile the testator told him he had been making some alteration in his will, which he wanted them to sign. He was sent for again on the 12th January, 1856, and then saw Adams there, and the testator brought out some paper, which all three signed as they had signed the former one. He described the search for the wills after the death, and the finding of the first duplicate, and then the second, the one interlined; both, he said, were in envelopes "gummed" up. He believed the codicils to be in the testator's handwriting.

The witness was cross-examined by Mr. Serjeant BALLANTINE, whose first question was,—Pray when did you see Catherine Marsden last; since the last trial? The witness said he thought he had seen her at Matlock. He said sometimes she had dined with the testator, and he (witness) had taken tea with her. On the 6th of January, 1856 (the date of the second codicil), she was not in the room; nor did he see her on the 12th of January, the date of the third codicil. The testator, he said, was angry with him once for entering the loft, the room over the stable, where the last codicil was found. Pressed why he had not mentioned this at the former trials, he said he had not been asked, but he said he had told it to Newbold, who is now dead. He was pressed a good deal as to the circumstances of the finding of the will. They were searching, he said, two hours. Asked whether in the meantime he had mentioned that he had seen the testator execute

two codicils, he said he had not. Asked why he did not mention it, he said, "How did I know they were not destroyed? I had said nothing of them during his life, and I said nothing when he was dead." Pressed further, he said he did not know but that they had been destroyed, and he did not want to make mischief.

Mr. Serjeant BALLANTINE.—What mischief could you have made by saying you had witnessed two codicils?

Witness—A deal of mischief it might have made. I did not know what was in them, and I would not betray him.

Mr. Serjeant BALLANTINE.—Why did you mention, then, that there were other papers?

Witness.—Because I knew he had signed two codicils.

Mr. Serjeant BALLANTINE.—So, lest you should make mischief, you did not mention that you had witnessed codicils, but you mentioned that he had signed "other papers?" Was that it?

The witness said that it was so; he had "never betrayed" the testator.

Mr. Serjeant BALLANTINE.—And you never said a word about the codicils until they were produced, eh?

Witness.—No, nor should have done.

He was pressed as to why he had not, when the first codicil was found mentioned the second and third. He gave similar answers. He was present and sent for, he said, when the first was found. He was sent for, he supposed, because he had said there "were other papers."

The witness, who it will be observed, Adams and Newbold being dead, and the two labourers being adverse, was the principal witness for the plaintiffs, was briefly re-examined by Mr. KARSLAKE, and it was elicited that he had given substantially the same account as to the testator having given him a paper to keep, &c.

The Court then adjourned.

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## SECOND DAY, TUESDAY, FEBRUARY 23rd.

This morning Buxton, the other of the two persons whose names are to the first codicil as attesting witnesses, was called and examined by Mr. FIELD, Q.C. He was examined as Gregory was, "adversely,"—that is as a hostile witness, and, as in the other instance, his examination, in fact, assumed the tone of a severe and stringent cross-examination. Like the other witness, he had been, of course, examined at the former trials, and, like the other, he answered for the most part with hesitation, and professed not to know or recollect. When shown the codicil, and asked if his name was signed by him, he said he could not say. When pressed as to his former answers at the trials at Derby he hesitated still more. He said he had never seen it before he saw it at Derby; but when pressed whether he had not said at Derby that he signed it he still hesitated.

The LORD CHIEF JUSTICE warned the witness again and again.

He still, however, hesitated.

THE LORD CHIEF JUSTICE.—Now, attend to me, and take care how you answer. You were shown a paper at Derby which had your name to it? Yes.

**The LORD CHIEF JUSTICE.**—Did you say you had signed it?—I was not sure.

**The LORD CHIEF JUSTICE.**—Did you say so?

The witness hesitated.

**Mr. FIELD** (reading from his former examination.) Did you not say you had seen the testator sign it?—I can't contradict that.

**Mr. FIELD.**—Did you say you had seen Gregory sign his name?

The witness, with some hesitation, admitted that he had.

**Mr. FIELD.**—Did you, in fact, see him sign?—I saw him sign some paper.

**The LORD CHIEF JUSTICE.**—Is that it?—I think it is.

**Mr. FIELD** then went on to elicit from the witness that the testator had sent for him and Gregory; that when they came the testator was writing something, that they had both been present, and that the testator signed his name to some paper, and then they—the witness and Gregory—also signed it.

Was that paper a codicil to a will?—I do not know.

**Mr. FIELD** then endeavoured to elicit the character and nature of the paper, the position of the signatures, &c.—The witness said he did not see the testator write, nor observe the paper wet with ink.

Why, did not you say just now you saw him writing?—He had a pen in his hand.

**Mr. FIELD** then went on to read from the witness's examination on the former occasion:—"I stood at his side and saw him writing." Is that true?—I did not see him writing. He had a pen in his hand.

**The LORD CHIEF JUSTICE** referred the witness to his former examination.

**Mr. FIELD** read from it thus:—"I say that the signature is in the handwriting of George Nuttall, and I was present and saw him subscribe, by writing his name to the said document" (the codicil). Is that true or false?—I did not see him write, I believe.

**Mr. FIELD**, finding he could elicit nothing more from the witness on that head, proceeded to elicit from him other matters. He had been, he said, employed by the testator, and after his death by Else, the principal plaintiff. He remained in Mr. Else's employment, he said, about 30 weeks. He was then pressed, as the other witness Gregory had been yesterday, as to a suggested conversation between Else and them. He professed not to recollect, but being pressed, admitted that he remembered Else ordering Gregory off.

**The LORD CHIEF JUSTICE.**—What made Else order him off?—I don't know. I did not hear what discourse took place between them.

He was further pressed as to whether they (Gregory and he) had not said to Else, "We were coming up to see you, Sir," and whether Else did not say, "This seems a planned thing between you. Is it so?" and whether he (witness) had not said that he thought they—*i. e.*, he and Gregory—ought to have something. To all this he answered that he "could not recollect," as the other witness (Gregory) answered yesterday. He was further pressed as to whether he had not said to Mr. Newbold, "It's all Mr. Else's fault, as he has not done right to us. How can we get over what we have said to the other side?" and he said he did not say so.

The witness was cross-examined by Mr. Serjeant HAYES on behalf of the

defendants who contest the codicils. His first question was "Do you recollect my examining you in Chancery?" The witness said he did not recollect it, on which the learned Serjeant observed,—"Oh, I had not my wig on then. (It was before the examiners in Chancery.) So, perhaps you may not remember me." He went on to ask the witness as to what he had then said. "I say I was present and saw Mr. George Nuttall sign his name to the produced document" (the codicil.) To this he answered as before, "I don't recollect." He was then taxed with other expressions taken from his examinations in particular. "I always thought I saw him sign his name until I was frustrated." The witness returned a similar answer.

Mr. Serjeant HAYES.—Were you frustrated?—Yes, I was.

The witness was then taxed with these expressions:—"I don't say here I saw him sign." He said he did say that. Asked if he did not say "I can't swear I saw him sign," he said he could not say now, it was so long ago. Asked if he had not said when first shown the paper that he did not think it was so long as 1855 since he signed the paper, he said he had said so, and he went on to state that Job Knowles had told him that if any one asked him when he signed the codicil he must say it was in October, 1855. (This Knowles was asked yesterday, and he denied it.)

Mr. Serjeant HAYES.—How came he to say so?—Witness said it arose from his saying that he had not signed anything so late as October in that year. He had signed several papers, he said, for the testator; the last he thought, was in May, 1855. And he said Gregory had in his hearing said he thought they had signed what they had signed before October. (The drift of this examination was to show that the two witnesses had really signed some paper for the testator, but that it was not a testamentary paper.) The witness was shown his examination in Chancery, in which he had so stated; and, having read it, he said Gregory had so said in his hearing. He was then shown a passage in which he had stated that Else had promised them 20*l.* a year, but that they thought it was in the codicil.

Mr. Serjeant HAYES.—Is that true or false?—True.

Did you expect it was in the codicil?—Yes.

Why?—Because we were told so.

Reading from the witness's examination—"He (Else) said if we would keep the secret and carry it with us to our graves he would give us 20*l.* a year for our lives." Is that true or false?—True.

"And that if anything happened to us he would provide for our wives?" Is that true?—It is.

Did you say he gave you 10*l.* to sign a paper?—Yes.

Is it true?—It is.

The LORD CHIEF JUSTICE.—That he gave each of you 10*l.*;—Each of us.

Mr. Serjeant HAYES.—Was that before or after you swore to the codicil?—I can't recollect.

Was it soon after Mr. George Nuttall's death? Soon after rent-day—Lady-day?—I believe it was. (The testator died on the 7th of March.)

Well, the next rent day? Did he (Else) give you 10*l.*?—Yes.

What for?—We were told it was in the codicil.

Who told you so?—Mr. Newbold. He went on to say that he and Gregory both had something (200*l.*) under the will as old servants, and that

he had got, but this 20*l.* a year he thought was different. He thought he had 20*l.* a year besides under the codicil.

**The LORD CHIEF JUSTICE.**—When did you find out your mistake?—The witness said he could not say when.

Mr. Serjeant HAYES went on to elicit that Else was present at the examination in Chancery when he had stated the above facts.

The witness was then re-examined, or rather cross-examined, by Mr. KARSLAKE on behalf of Else.—Is all you swore true?

The LORD CHIEF JUSTICE intimated a doubt whether the learned counsel was entitled to cross-examine his own witness.

**Mr. KARSLAKE.**—He is hostile.

**The LORD CHIEF JUSTICE.**—Not as to the particular matter of the codicil.

Mr. KARSLAKE then dropped the tone of cross-examination, but, nevertheless, continued to treat the witness as adverse. He elicited that the witness had been discharged by Else, and had seen the attorney on the other side afterwards, and had told him he thought it was in October, 1854, he had signed the paper (a year before the date of the codicil, in October, 1855), but he did not recollect.

When were you first “illustrated?”—when you saw my friend here?—Yes, I think it was. (A laugh.) Taxed with having said that he might have seen the testator sign, or write, something, he did not know what it was, and he admitted he had said so, but he could not remember whether he had said he could not tell when it was, nor how long before the testator's death. He was then pressed as to when it was Else gave him the 10*l.*, and whether it was “on,” or “at,” or “after” the first rent-day. He said it was “on” the first rent-day, and no one was present but Else and himself.

What “secret” were you to keep?—Witness (hesitating).—We were to keep the secret, and carry it to our graves.

What secret?—The witness hesitated.

**The LORD CHIEF JUSTICE.**—What secret?—The witness still hesitated.

What secret? Tell us the truth, the whole truth, and nothing but the truth. Stand up; speak out; tell the truth. What secret was it you were to keep?—The witness (hesitating).—That the codicil was not genuine; that we were to say we signed it, when we never had signed it.

**Mr. KARSLAKE.**—Who was present on that occasion?—No one that I know of, besides Else and I.

Mr. KARSLAKE read from the witness's examination on a former occasion:—“Gregory and I afterwards went to Else's house. On that occasion Else told both Gregory and I that if any one asked us we were to say that the codicil was signed in October, 1855. He said he would give us 20*l.* a year for life; but we expected it was in the codicil.” Now, is it true that Gregory was present on the occasion?—He was in the room but not at the time that was said to me.

What did Else say about the “secret”?—That we were to say the codicils were signed at another time; that is, that codicil.

Did you say on a former occasion, when asked what the secret was, that you could not recollect?—I can't recollect.

Mr. KARSLAKE pursued what was in effect, it will seem a stringent cross-examination as to what the witness had said on his former examinations in Chancery, as to which

The LORD CHIEF JUSTICE observed that the examinations in Chancery were not given question and answer; but the examiners gave what they deemed to be the effect of the answers.

Mr. KARSLAKE said that was so. The learned counsel went on to elicit from the witness that some one had told him after the first trial at Derby (when the plaintiff got the verdict) that he was to have 1*l* a week.

The LORD CHIEF JUSTICE.—After the first trial you were told that?—Yes.

Mr. Karslake upon that sat down and closed his examination.

THE LORD CHIEF JUSTICE then elicited from the witness that when he and Gregory signed the paper they signed with the same ink and the same pen, and also that the witness, having lived for many years with the testator, was familiar with his handwriting. Then (shewing him the codicil) he addressed the witness thus:—Now, attend to me. On your oath, do you believe the signature to that paper to be his handwriting?—The witness (looking at it, and after a pause).—I can't say.

Have you no belief about it?—No.

Now, attend to me, and be cautious how you answer. Have you put your name as witness to any document in the shape of a codicil since George Nuttall's death?—No, I have not.

Are you sure of that?—Yes.

That you never, with Gregory, signed any codicil as witness after George Nuttall's death?—No, I have not.

The two duplicate wills of the 15th of September, 1854, were then put in, and it was formally admitted by counsel that they were both entirely in the testator's handwriting, with the exception of the interlineation in one of them in favour of Else and Catherine Marsden, the genuineness of which is denied, though not directly in issue in this inquiry.

The LORD CHIEF JUSTICE observed to the Jury that they would find a comparison of these admitted documents with the disputed codicils very material.

The evidence of the testator's attorney, Mr. Newbold, who had died since the last trial, was then read. He stated that the testator was a person of very secret habits. The will of 1854 he had drawn in blank, and the testator himself copied it out in duplicate and filled in the blanks. He described the finding of one of the duplicate wills in the cupboard in the testator's bedroom (which was filled with papers) immediately after his death. Knowles was present at the funeral, and said something, and a further search was made, but only the duplicate will was found. Both wills were found gummed up in envelopes. Some papers had been taken by John Nuttall to Else's house. In April witness sent to Else for some vouchers, and Else brought a packet he said he had found gummed up (as the wills had been), in an envelope. The packet was opened in the presence of the executors, and it contained the first codicil (dated October, 1855) and the "epitome" of the will. Buxton and Gregory were sent for, and they acknowledged their signatures. They were asked as to the attestation, and whether they were present when the testator signed, and they said they were. The affidavit of attestation was sworn by one of them in the presence of the other. The witness went on to describe the circumstances of the discovery of the second codicil. Else brought a bag of

"highway papers," and a little penny account-book of the testator's was found, which was wanted ; and afterwards, at the witness's house, the book being there, Else and another person were both looking at it, and the second codicil (dated the 6th of January, 1856), was found between the leaves, one of which was slit to receive it. The witness, on cross-examination, had admitted that he was absent for some minutes—time enough (as was observed) for anything to be slipped between the leaves, supposing that to have been done. The witness was then examined as to the circumstances (so far as he was aware of them) of the finding of the third codicil, but he was not present at the time, and could only say what the boy told him. As to this the principal witness would be Else himself, who only was with the boy when this codicil was discovered. The witness being asked as to the handwriting of the codicils and the "epitome" of the will, found with the first of them, said he believed they were all in the testator's handwriting. Being cross-examined as to the contents of the basket of papers carried to the house of Else, he said he had not examined them. His client, the testator, was, he said, a good man of business and a "strong-minded man," methodical in his habits, and a man of "fair ordinary education," but "one who misspelt frequently." As to this, however, he admitted that he and his clerks had been looking out for misspellings. He always knew, he said, that the testator misspelt occasionally, but since the first trial he had discovered that it was more frequently. He had a conversation with the testator on the Sunday before his death, from which he conjectured that he desired to alter his will. Asked if he had ever known him hide papers or money, he said he had not, except in the instance in question. The testator, however, he said, was of a secretive disposition. He described the incident which occurred a few days before the death of the testator, when he dragged himself out of bed towards the cupboard where his will was, but could not get at it, and was too weak to say what he wanted to do or to be done.

The duplicate will was here put into the hands of the jury with the codicils, and

The LORD CHIEF JUSTICE observed that he imagined he might assume that it would be admitted on the part of the plaintiff, who set up the codicils, that if they were genuine the testator must have written two different hands, for certainly the codicils and the will were in different handwritings.

MR. KARSLAKE said he thought it would appear that the testator did write different hands.

THE LORD CHIEF JUSTICE.—That may or may not be ; but at all events you must assume that he did so, for certainly the handwriting of the will is different from that of the codicils. The one is an angular hand, the other more round and free. A man may write different hands, but certainly if the same man wrote the will and the codicils he did write very different hands. His Lordship went on to observe that he might also add that it was obvious that the same person who wrote the codicils also wrote the disputed interlineations in one of the duplicates of the will.

Photographs of the wills and codicils had been executed, and were handed about with the originals for inspection ; and certainly they abundantly bore out the observations of the Lord Chief Justice, as the jury appeared to think. It should be observed that there are two interlineations

in one of the duplicates of the will ; but one of them (a bequest to a professor of music) is in the text of the other duplicate will, and is admitted to be genuine. The other interlineation of two devises to Else and Catherine Marsden is the one alluded to by the Lord Chief Justice as in the same handwriting as the codicils.

Attention was called to certain misspellings in the will—"anuity" for "annuity," "untill" for until," "oweing" for "owing," "debth" for "depth;" and also to various misspellings of different words in the codicils—"daughter" for "daughter," "hears" for "heirs," "executers" for "executors," "codicel" for "codicil," "tith" for "tithe," &c. On the whole, the misspellings appeared to be much more numerous in the codicils than in the will, although the latter is the larger document. There were only three or four in the will, which is long, whereas there were as many as nine, or even twelve, or more than twelve, in each of the codicils. On the other hand, it should be observed that the will had been prepared in draught by the attorney, and copied by the testator, whereas the codicils (whoever wrote them) were not drawn by an attorney. Then, as regarded the epitome of the will found with the first codicil, it was admitted to be for the most part in the handwriting of the testator, but there were some additions, which were disputed, and in these, it was said, there were discrepancies between the "epitome" and the will. It was remarked that the word daughter was always spelt rightly in the will and always wrong in the codicils ; but for the most part the words misspelt in each set of documents were different. The witness was examined a good deal as to instances of misspelling he had found in the testator's documents, which certainly were as bad as those in the codicils—"hight" for "height," "debth" for "depth," &c., "deelapidations" for "dilapidations," &c. At last the Lord Chief Baron observed (at the last trial), I think you have made out that the testator could not have stood a competitive examination. (Laughter.) There were, it appeared, upwards of 150 words misspelt by the testator.

John Marriott, one of the executors under the will (Mr. Cresswell, the other executor, being dead, although his name remains in the suit), was then examined by Mr. HANNEN.—He had taken the key of the cupboard after the death, and kept it until the funeral ; and on the day of the death two sacks of papers were taken to Mr. Newbold, the attorney. He was present at the search for papers after the funeral, when the second duplicate of the will (that in which there is the suspected interlineation) was found "gummed up" in an envelope. It slipped out from between other papers, after a long search. Mr. Cresswell (the witness said) opened the envelope, and took out the will and read it. Mr. Newbold was there, and he had the other duplicate, and they compared the two, reading them over together. No further search was made, and the papers were put back into the cupboard, and it was fastened up. Mr. Newbold, he said took possession of the second duplicate of the will, and took it away with him, and the witness locked up the room and took the key. Next day he and Mr. Newbold took all the papers out of the cupboard, and they were carefully looked over. There were a great many papers and little books—tithe-books, account-books, highway-books—probably as many as two sacks full of them altogether. They were taken away by Mr. Newbold, and then the

cupboard was empty, and the room was locked up no more, but a desk in which some papers were put was locked up. A few days afterwards the witness went with Mr. John Nuttall, the residuary devisee, and took away the papers out of the desk, and as Catherine Marsden was "boisterous," and ordered them out of the house, and said it was hers, he never went there again. Mr. John Nuttall at that time was stopping at Mr. Else's "as a friend," and took the papers there. (It was among these papers that Else said he had found the first codicil, the second being found at Newbold's, and the third under the window frame in the "loft" at the testator's house.) It was after this that one Wagstaffe sent in a bill some years old against the testator's estate, and vouchers were asked for, and Mr. Newbold told witness that Else had found something gummed up in an envelope among the highway-books, and it was opened in witness's presence, and found to contain the first codicil and the epitome of the will. The witness was present when Buxton made the affidavit for probate of the first codicil, and Gregory was present and heard it read, and said it was correct. After this he heard from Else of the other codicils. At that time Else was living in old Nuttall's house, to which he removed in September, 1856, Catherine Marsden having gone away. It was in October, 1857, the third codicil was found in the hole beneath the window frame in the loft—the room over the stable. The witness and Knowles and Newbold went up into the room, and the boy Champion, who was with Else when it was found, explained how it was discovered. The witness had never before been in that room. The witness said he had known the testator for years, and knew his handwriting well, and he believed all the documents—wills, codicils, epitome, and all—to be entirely in his handwriting.

Cross-examined by Mr. Serjeant BALLANTINE, the witness admitted that there was a difference in the handwriting of the will and of the codicils, and that the handwriting of the will was his ordinary hand; but he had seen, he said, writing of the testator's similar to that of the codicils. Job Knowles had told him to be careful in searching, for there were more documents, or had been. "That," said the witness, "was his constant cry."

Mr. Serjeant BALLANTINE.—Well, I suppose you asked him what he meant?—No, I did not.

You did not! Why, you knew you might get into some scrape as executor?—No; we were more ignorant then than we have been since. (A laugh.)

What, you mean since you have been in the hands of the lawyers, eh? (Laughter.)—Why, yes; we learned a few things then. (Laughter.)

Well, but did it not occur to you that it might be important if there were "more documents behind?" Did not you ever ask him what he meant? Did not it seem to you as rather curious that Job should be "constantly crying out" that there were more documents, and did not you ask him what he meant?—The witness said he had not. He thought there was an end of it when the first was found.

Yes, but there was not, you see; there was the second, and Job still kept on, you say, crying out that there were more. Why did not you ask him when the second was found if there were any more to come?—The witness said he had not asked.

Well, when the third was found Job Knowles stopped, did he? He cried out "No more?"—No. The witness went on to state that the testator sometimes drew wills for other persons, and he produced one which he had so drawn, and the whole of which, he said, was in his handwriting.

The LORD CHIEF JUSTICE drew attention to it for the purpose of comparison.

Mr. KARSLAKE, in re-examination, elicited that Job Knowles from the first declared that there were more documents, and said so at the funeral.

The LORD CHIEF JUSTICE elicited that the witness had no interest in the codicils, but took something under the will.

The Rev. Mr. Melvill, rector of Matlock, and "surrogate"—i. e., an ecclesiastical officer under the old system for the probate of wills,—proved that the two attesting witnesses of the first codicil, Buxton and Gregory, had both attended before him on the occasion of the probate (in May, 1856), and that Buxton made the affidavit of attestation, the witness reading it over to him in the hearing and presence of Gregory, the purport of it being amply explained to them both. They both said it was correct. Buxton certainly said so before he made the affidavit.

The examination and cross-examination of Mr. Cresswell (the co-executor under the will) was then read as taken at the last trial, he having since died. It entirely confirmed the evidence of Mr. Marriott, the other executor, and he declared that he believed the codicils to be in the handwriting of the testator, whom he had known 30 years. The testator, he said, "wrote variously," and also sometimes spelt wrongly. Ordinarily, the witness said, the testator wrote and spelt well, and he was "a clever fellow," and an excellent man of business, and very methodical, cautious, and careful, but occasionally eccentric.

Mr. Parkin, a land surveyor at Wirksworth, who had known the testator many years, and had sent him something in the envelope in which the first codicil was found gummed up, was next called, and declared that he believed the codicils to be in his handwriting, and added that his handwriting varied, and was sometimes stiff, like a surveyor's, and sometimes "free and easy." He produced several letters written to him, as he believed, by the testator, on looking at which, however,

The LORD CHIEF JUSTICE observed to the witness, "Are you sure that he wrote them all? Did no one ever write for him."

The witness said, not that he knew of. He believed not.

The letters were handed to the jury as evidence of variance in handwriting.

Cross-examined by Mr. Serjeant HAYES, the witness said the testator's ordinary writing was rather like that of the will. He had only those three letters of the testator's, nor did he believe he ever had more.

Mr. Serjeant HAYES.—You know Else's handwriting? He wrote like the testator, did he not?—The witness said he did; more like the stiffer handwriting of the testator.

Looking at the interlineation in the duplicate will, (in favour of Else,) is it like Mr. Else's handwriting?—The witness said it was, rather.

Re-examined by Mr. KARSLAKE, he said he, nevertheless, thought it was in the testator's handwriting. He did not know much of Else's. The testator often wrote a stiffer hand, like that of the codicils.

One or two other confirmatory witnesses were called. George Knowles, a cousin of Job Knowles one of the attesting witnesses to the disputed codicils, stated that the testator used to keep such a book as that in which one of the codicils was found. And a man named John Potter stated that on one occasion when employed in the hayloft, (where, as Else stated, the third codicil was found,) he discovered a sum of nearly 20*l.* secreted, in sovereigns, of which the testator gave him one for finding it.

Cross-examined by Mr. Serjeant BALLANTINE, the witness stated that this was 14 years ago, and it was talked about. The money was of a dark colour, and seemed to have lain there a long while, and the place was all covered with dirt. The testator seemed surprised at it, and said he could not understand it, but put it into his pocket. (A laugh.)

Mr. Thomas Henry Newbold, son of the deceased attorney, also gave confirmatory evidence as to the finding of the book, in which the second codicil was discovered among the papers taken to his father's. It was given to Else, and then Else (at Newbold's house) found the codicil in it. The book, the witness said, was put on a desk in his father's room, and Else was in the same room for some time looking over other papers. As they were leaving, the book being on the desk, the witness took it up, and it was opened either by Else or himself, and some one said, "What's that?" pointing to a paper (the codicil) pinned to the last leaf of the book. From what the witness knew of the testator's handwriting, he said he should say that the codicil was in his handwriting.

Cross-examined by Mr. Serjeant HAYES.—The witness said he was told to search for the book by his father; he did not know whether it was at Else's suggestion. During the search Else was present, and close by, and remained there until the book was found. Witness could not say that Else looked with him. He was standing at the desk. He did not know what sort of book it was.

How do you know he did not?—The witness said that Else did not say anything about it to him; there had been a conversation about it, he believed,—as to Knowles wanting a book.

Did he not look into it?—The witness said he believed not.

Did not he take it into his hands?—Witness could not say; but would not swear he did not.

Did he not have it in his hand before it was laid on the desk?—Witness could not say; he might have done so.

Now, don't you believe he did? Don't you think that he did?—The witness said he believed that Else did look at it; he could not say if he took it in his hand. It remained on the desk, and Else remained in the office an hour. During that time the witness said he was engaged about his father's business. The witness stated that he took some property under the first codicil.

Re-examined by Mr. KARSLAKE, the witness said they had looked at many other books before they lighted on this.

In answer to questions from the LORD CHIEF JUSTICE the witness said he had the book in view the whole time after it was found, and he should have seen if it was taken away.

THE LORD CHIEF JUSTICE.—Could any one have inserted the papers in the slit of one of the leaves without you seeing it?—No.

Did any one do so in your view or to your knowledge?—No.  
The Court at that point adjourned.

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### THIRD DAY, WEDNESDAY, FEBRUARY 24th.

This morning a working mason, Charles Young, who had been employed by the testator, was called to give confirmatory and explanatory evidence as to the "loft" where the third codicil was said to have been found beneath the window-sill, and a model of the window-frame was produced to show that it might be pulled out. He described the hole found beneath the sill, and how it had, as he supposed, been made, and so long ago that (as he said) the "hole seemed very nearly as old as the building." And he stated that he had once seen old Nuttall, the testator, go into the room and bring an old paper out of it. This witness was not at either of the former trials, and he was pressed a good deal by Mr. Serjeant HAYES in cross-examination as to when he first mentioned the matter. He said it was to Mr. Else; he could not say exactly when, but it was after the last trial. It was elicited that there were two fresh-looking bricks over the hole, slightly covered with lime.

Another mason, at Matlock, named Hurd, who had been engaged in the building of the stable, over which the loft is, about forty years ago, was also called to give further confirmatory evidence on this point, and he also was a new witness who had not been examined before. He stated that the hole was not there when he built the place, but that it must have been made about twenty years, and had been done very roughly, and not by a mason. He had seen old Nuttall, the testator, work at the building himself and use the trowel.

Cross-examined by Mr. Serjeant BALLANTINE, the witness stated that Else had occupied the house since October, 1856. Pressed as to whether the bricks had been there more than three or four years, he said, he was sure they had been from their appearance.

Mr. Campbell, a railway superintendent, another new witness, was likewise called on the same point, and proved that the testator once fetched him a measuring chain which he wanted to borrow out of the loft, which he kept locked, and opened with a key he had about him. [The object of this evidence was to show that the testator used the room for secret purposes, and kept it secured as a sort of secret chamber.] This was about a year before his death. After this the testator had asked about deed-boxes, &c., and observed that they could be carried away; and he then asked about a "safe" for keeping deeds, which he thought would be more secure. He had a gun; he spoke of revolvers also, and expressed fears as to robbers. He was, however, the witness said, a sensible and intelligent man, and took in *The Times*. In cross-examination it was elicited that there had been a remarkable burglary in Ashover, the adjoining parish, which had excited great alarm, and the robber was shot in the bed-room.

Mary Ann Knowles, daughter of Mr. Job Knowles, one of the attesting witnesses to the second and third codicils, and who was examined by Mr. HANNEN, was called to confirm her father's evidence as to his having been sent for by the testator, on one occasion, twice in one day, as if he was anxious to see him. It was while she was at school, she said, but during

the Christmas holidays of 1855,—that is to say, in January, 1856. She is now, she said, about 20. [The dates of the two codicils Knowles attested are both in that month.]

Cross-examined by Mr. Serjeant BALLANTINE, she said she had been sent for by telegraph yesterday, and had never been examined on, the matter before, nor had she told any one of it, except her father; but she had a distinct recollection of it. Her brother was with her.

Her evidence was confirmed by her brother, George Knowles, who also had been sent for by telegraph yesterday. He stated that the testator wanted to see his father "very particularly." He could not fix the date precisely, but it was the last time he saw the testator, and it was some weeks before his death. It was during his sister's holidays.

Cross-examined by Mr. Serjeant BALLANTINE, the witness said his father's house was a quarter of a mile from the testator's, and the house of Mr. Adams, the surgeon, was between them, and only 300 yards from the testator's.

John Else, the real plaintiff, who sets up the codicils, was then called, and examined by Mr. KARSLAKE, Q.C. He is 44 years of age, and was brought up at Matlock. He knew the testator as long as he could remember any one, and used constantly to see him even while he was at school, and used to copy for him. Sometimes he used to stop away from school for the purpose; and after he left school he used to go on in the same way, assisting the testator. In 1837 the office of assistant-overseer of Matlock was vacant, and he was appointed to it, chiefly by the testator's influence. He continued still to go to the testator's to assist him in copying, in keeping accounts, and receiving rents. Catherine Marsden was keeping house for the testator, and witness married her sister, who was brought up in the house. There was property of the testator's, not at Matlock, but in the neighbourhood, of which he used frequently to receive the rent for him, and at dinners of the testator's tenants used to take the chair when the testator left the table. The testator was highway surveyor, and witness used to collect the rates for him down to his death, without his requiring any security. After this, the assistant overseership of another parish became vacant, and the testator got him the appointment and became one of his sureties. He was afterwards appointed with the testator one of the joint assessors of the income-tax, the testator doing his utmost to assist him in obtaining the appointment. For six or seven years he had been one of the Poor-Law Guardians of his district, he was a churchwarden of his parish, and a member of the local Board of Health. He was collector also for another parish, and the testator assisted him likewise to obtain that office. In 1842 he married his wife, Catherine Marsden's sister, from the testator's house, and he still lived at Matlock, and the testator was at some trouble to settle him in a house of his, charging him very small rent, scarce one-third of the real value. In that house he lived down to the testator's death. After this the witness said he used to see the testator almost daily, and copy writings and collect money for him. Some time after this, the witness having an offer of business elsewhere, the testator advised him to stop in Matlock, saying he should be no loser by it, and so he declined the offer, and remained in Matlock. This was eight or nine years ago. [That would be about 1855; the will was in Septem-

ber 1854, and gave witness an interest in some tithes, the interlineation, which, of course, was subsequent, gave him an annuity, and the codicils, the first of which was in October, 1855, gave him by degrees the bulk of the real estate.] The witness went on to say that he knew Knowles, Adams, and Newbold very well. He saw the testator on the Tuesday before his death (which was on Friday, the 7th of March, 1856,) and had not seen him previously since the 25th of February in that year. In the interval he had been to see him, and had been told that he could not see him, as he was too ill. He went to Derby for a Physician for him, finding that he was worse. On the Tuesday he went and saw him; finding nobody there, he walked up into his room. Testator knew him, and put out his hand to shake hands, and tried to say something, but he could not form his words. Witness was with him from time to time until his death, and was with him at the time he died. After the death he was at the house with Knowles and Newbold; and was present during the search for the will. The cupboard in the bedroom was forced and searched, and there was a desk down stairs, which he also saw searched. He saw a gummed envelope found and heard the will read. [This was the first duplicate of the will, without the interlineation in favour of the witness.] Mr. Marriott, the executor, had the cupboard re-fastened and the room door locked. Witness had never heard from the testator what he had done in the way of will or testamentary disposition. He was not in the bedroom again until after the funeral. He attended the funeral, and remembered Knowles making a statement that there were more papers, &c., and they went back to the house and the bedroom was opened and the cupboard was re-opened, and another search was made in it. He saw the second envelope opened, found by Mr. Marriott, the executor. [This contained the second duplicate of the will, with the interlineation in favour of witness, devising him an annuity of 100*l.* a year.] After this the room was locked, and Mr. John Nuttall (the residuary devisee under the will) came and stayed at his house. Witness went away for a few days, and when he came back found some papers had been brought. (These were the papers which John Nuttall had brought from the testator's.) Witness did not, he said, then examine them at all. In April, 1856, he had a letter from Mr. Newbold (the deceased attorney,) as to a voucher for some charge against the testator. (He had not kept the letter.) He was to examine the papers and see if he could find it. Up to that time, he said, he had not examined them. He then examined them, and found a packet or envelope, gummed up, similar to those in which the duplicates of the will were found. It was an envelope addressed to the testator by Mr. Parkin, the land surveyor, and had been re-gummed. It was endorsed "Bonsall" and "Wensley" (two places where the testator had estates.) He took the envelope as it was to the executors, Cresswell and Marriott, and it was opened in their presence. In it was the first codicil and the "epitome" of the will, and two papers of Mr. Parkin's as to Bonsall and Wensley. He was present next day when the two attesting witnesses, Buxton and Gregory, came to Mr. Newbold's, the attorney, and acknowledged their signatures to the codicil. They were asked whether they remembered signing it, and they said they did, in their master's sitting-room. He was present also on the occasion when they went before

the Rector of Matlock, and they again acknowledged the codicil. Buxton made the affidavit of attestation, and had it read over to him and said it was correct, and so did Gregory. The witness went on to say that he had been appointed successor to the testator as surveyor of highways, and he was applied to as to the prices of "teamwork." Witness said all the testator's highway books were gone to Mr. Newbold's, the attorney. He mentioned the matter to Mr. Newbold, and had applied to him for the book, which would show the prices. He met Mr. Newbold, who said he had better come with him to his office and "have a look" for it. He accordingly went to the office and saw the bags of papers brought in and emptied out upon the floor. Young Mr. Newbold found the book; which witness did not (he said) know before, but it contained the prices he wanted. It was put down on a desk at which the elder Newbold (the deceased attorney) was writing. Witness was otherwise engaged looking over other papers. Some time passed, and then, as dinner was announced, Mr. Newbold said, "John, don't forget your book." and either witness or young Newbold "reached" it and opened it, both standing together: he believed he opened it, but young Newbold saw "it" first (*i.e.* the paper said to be found inside,) and saw it almost directly—that is, they saw the second codicil. It was pinned in, the leaf was slit, and the paper slipped through. [The book and codicil were produced. The book is a small 12mo. memorandum book; the codicil is on a sheet of foolscap, so as to require to be folded twice in order to get it in the book.] Mr. Newbold read it, and it was shown the same day to Mr. Adams and Mr. Job Knowles, whose names are to it as attesting witnesses. The witness was then examined as to the circumstances of the discovery of the third codicil, which makes him residuary devisee of the real estate. In the autumn of 1856, he said, he had gone to live at the testator's house, which Catherine Marsden had then left, and he went there as her tenant. He knew the "loft" (where the codicil was brought to light,) and though he had never been there in the time of the testator he had seen him there. After he went into the house he used it, he said, as an office; it was in a rough state. It was locked with a strong lock, and was not entered from the house but from the outside only. In October, 1857, he desired to have the place cleaned. The window was in a very dirty state, and he told a boy in his employ named Champion to get it cleaned. It had not been opened in his time, *i.e.* since he had been in the house. Before the window was a window-board—apparently fixed and firm. The boy said, "Master, can you open the window?" "I unscrewed it (said the witness,) and I tried to get on the window-board, and laid hold of it, in order to spring up on to the window-board, and it came out, and I nearly fell backwards. It slid out. The boy saw it. I was going to push it back and the boy said, 'What's that?' I said 'What?' He said, 'There is something under the board.' I looked and saw a hole under the window-board, and in it a jar, which I took out; and found in the jar a canvas purse and a paper; the canvas bag was twisted round the paper. (The jar was produced. It was a common brown jar, only 4in. high and 3in. broad.)

THE LORD CHIEF JUSTICE.—Was the paper inside the bag? No; the bag was round the paper. In the purse there were 20 sovereigns. I opened the paper, and I said, when I first saw it, "I doubt that's something serious."

I looked at it, and put it back in the same place and locked the room door. I went to Mr. Marriott, the executor under the will, and then to Mr. Newbold, whom I saw, and he said he could come in the evening. I also sent for Job Knowles, and he came in the evening, and the place was pointed out to them where the paper was found, and it was read and shown to Knowles and to Mr. Adams next morning. (Knowles and Adams were the attesting witnesses to it.) The witness was then examined as to the testimony of the two attesting witnesses to the first codicil, Gregory and Buxton, who, it will be remembered, had been a good deal cross-examined as to what had passed between him and them, and had stated that he had paid them money, &c.—When he came to live in the house he found Buxton there, who had been in Miss Marsden's service since the testator's death. He knew he had received 15s. a week from the testator, and he paid him 12s. He had already stated, and now repeated, that he had been with them at Newbold's office and before the surrogate. It was not true that Knowles, at Newbold's, had told Buxton that if asked when the codicil (the first) was signed, they must say it was in October, 1855. It was not true that Gregory said to him that he thought that he and Buxton had signed before that time; nor was it true that he had ever said to Gregory or Buxton that if any one asked them when the codicil was signed they must say it was in October, 1855; nor did he ever say to either of them that he would give them 20*l.* a year for life, "if he would keep the secret, and carry it to his grave;" or that if anything happened to them he would provide for their families. (These were matters deposed to by Buxton, yesterday.) The first rent day after the testator's death was July, as the rent was payable half-yearly—that is, July, 1856. He did not on that or on any other occasion give Buxton 10*l.* (as Buxton swore yesterday); nor did he on the second rent day or at any other time do so. As to Gregory, he had only been occasionally in his service for a week or two at a time, and he never gave him, as Gregory had sworn, 20*l.* by a sovereign at a time; nor did he ever promise them 20*l.* a year, and say that they had as much right to it as the Marsdens. He had given Buxton, however, 2*l.* on account of an accident which he had suffered; and he had lent Gregory 7*l.* or 8*l.*, which he had "stopped" out of the money he was left under the will of the testator. In the summer of 1856 Gregory came to his house (before witness went to live at the testator's house,) and said he had met a gentleman who asked him if he was not one of the witnesses to Mr. Nuttall's will or codicil, and that he told him he was: and that the gentleman wanted to know "if 100*l.* would be of any use to him." In March —

THE LORD CHIEF JUSTICE.—Was that all that passed?—Did you say nothing?—I asked him if he knew who it was? and he said it was a stout gentleman. In March, 1857, when he was living at the testator's house, and Buxton was in his service and was at work on a hedge, witness being there, Gregory came up and said to him in Buxton's hearing (as to which they were asked, and said they could not recollect), "We have come to see you." I said, "Well, what do you want?" Gregory said "Well, we think we are entitled to something—the same as Marsdens are, as we could have said we didn't see the master sign it." I ordered Gregory off the field, and followed him off towards the road. When he

got there he said "I'm off to Bonsall to-night." (Bonsall is the place where Elizabeth Sheldon, now Mrs. Ashworth, lived, and who benefitted more largely under the will than under the codicils—the devise to her of Bonsall being revoked by one of the codicils in favour of the witness Else.) I went back to the field where Buxton was, and said, "This seems a planned thing." He said, "Well, I think we are entitled to something." On the same day I consulted Mr. Newbold (the attorney), and discharged Buxton, who has never been in my employment since, and on the same day I went to Mr. Clarke, a magistrate, and made a complaint to him. In conclusion, the witness was asked as to the testator's handwriting, which he said he knew well, but which varied a good deal according to the nature of the documents he was writing; and, in his belief, all the documents, wills, and codicils were entirely in his handwriting, as also the epitome of the will.

The witness was cross-examined by Mr. Serjeant HAYES.—You wrote for the testator from the time you were a boy until his death?—Yes, occasionally.

He employed no other clerk?—No.

You copied for him?—Yes. He paid me.

How?—Five shillings a day.

The LORD CHIEF JUSTICE.—As much as that when you were a schoolboy?—Yes.

Mr. Serjeant HAYES.—And no more after?—No.

Catherine Marsden's sister was being brought up in the house, you say. Why, she was housemaid, wasn't she? There was no other servant?—No; she was housemaid.

Mr. Nuttall was in the habit of making wills, we hear, for other persons; were you?—I have copied some; I never made any.

It was elicited that he sometimes was asked to make wills and get the testator to draught them, and he copied them.

Now, as to the finding of the second envelope (containing the interlined duplicate of the will), you were present?—Yes.

You had been at the house almost daily after the death?—Yes.

Catherine Marsden was there?—Yes.

Was the second envelope sealed?—I don't know.

What! Don't you know if it was sealed or not?—No, I don't remember. In point of fact, you did write like the testator?—Yes, sometimes.

That interlineation you admit is like your writing?—Yes.

Considerably like it?—Yes.

Now, as to the first codicil, John Nuttall, (residuary devisee under the will) you say, was stopping at your house, and papers were brought to your house. Did he remain long after that?—I can't say how long.

You never had the curiosity to look at the papers until the codicil was found?—No.

Did he look at them?—He might do so.

He was executor?—Yes.

And an intelligent man?—Yes.

Was he three nights at your house after they were brought?—I can't say.

Well, you say in April you had a letter which you have lost, asking

you to look for vouchers. Now, where were these papers kept?—In the sitting-room.

Your general sitting-room?—No, a small room.

You had the letter on the Monday, did you go with the codicil on the Tuesday?—Yes.

Now, did a Mr. Richards dine with you on the Sunday?—No.

Nor on the Saturday or Monday?—No.

Did you not say you had found the codicil five minutes after he left?—No.

Now, as to the second codicil (which was found in the Highway Book), you had assisted the testator for years as Highway Surveyor and was appointed to the office immediately after his death?—Yes.

You say Knowles, the labourer, told you there was such a book?—Yes.

You had never seen it, and did not know there was such a book?—No.

Did he say if it was large or small?—No.

And you did not know, never having seen it?—No.

You went to Mr. Newbold's office about it, and I suppose you wanted it?—Yes.

Well, you say there were two bags of books and papers brought out?—Yes.

Did you stand by while they were emptied?—I was in the room, but at a little distance—at a desk.

How near?—Perhaps two or three yards off.

You never went near them?—I never touched the books.

Why didn't you? Why didn't you look yourself? It was you who wanted the book?—I didn't take any notice. I was looking at other papers.

Why, you went for this book?—Yes.

And did not take the trouble to look for it?—No, I did not.

When young Mr. Newbold picked it up did you look at it?—No.

You hadn't the curiosity to look if it was the book you wanted?—No, I hadn't it in my hand.

I did not ask as to that; but did not you look at it?—No.

How did you know it was the book?—It was a book about the team work.

Did you take the book in your hand?—No.

Now, in the former trial I put that question, and you answered "Yes;" is that true?—No, I didn't take it in my hand.

That is not true, then?—No.

I asked you, "Did you look at the prices to see if it was the book?" and you said, "Yes." Is that true, or is it not?—It is not so. I did not look at the prices.

Did you say "yes," then?—I dare say I did; I don't remember.

Then, is it true?—No it is not. I did not look at the prices until I was going.

I asked you, "What did you do with it after looking at the prices?" and you answered, "I laid it on the table." Is that true, or is it not?

Witness hesitated.

Did you say that?—Yes, I dare say.

Is it true, or is it not?—No, it is not; I could not have understood you.

Not understand ! Why, they are your own words, "I laid it on the table." How do you explain that ?

Witness paused, and then said, "I did not look at it until I was going out of the room.

Then, it is not true that you "laid it on the table?"—No ; I did not mean to say what was not true.

How long was it on the table?—An hour or so.

I asked you how it was you didn't take it up, as you had been looking for it so long, and you said, "you took it up and put it on the table." Is that true?—No ; I never did so.

Then all those answers are not true?—Not correct.

Then, I go to the third codicil—that room over the stable. You say you had not been there in the testator's life?—No.

The codicil was found in October, 1857?—Yes.

You had used the room, you say, from the time you went to live in the house in September, 1856?—Yes ; as an office.

It was in a dirty state, you say, and you told the boy to clean the window?—Yes.

Did he try to open the window?—No, I think not ; he couldn't ; it was too high.

Did you say, "You may not be able to open the window, as it is fresh painted?"—I don't know that I did.

Then, if the boy said you said so, is it true?—Perhaps ; I might say so.

Why, had the window been fresh painted?—No.

Then, how came you to say so?—I don't know ; I might have said so.

Why should you say so?—I don't know.

If the window had not been fresh painted, why should you tell the boy it had been?—I don't know. I might have said so.

You might have said so? You don't know why?—No, I might have said so.

Well, now, as to the labourers, Gregory and Buxton. You say you only gave Buxton 12s. a week?—Yes.

Now, did not you on the last trial say you paid him at first 15s. a week, and then dropped him to 12s. ; is that true?—If I gave him 15s., it was occasionally.

How came you to say you only gave him 12s.?—I didn't think of it.

You say you discharged Buxton ; had the codicil been proved then?—Yes, it had.

Now, have you looked for any codicil since ; it is a long time, you know, since the last was found ; have you found another?—No.

Did you ever find any before?—No.

Nor since?—No.

This concluded the cross-examination.

A great many documents which had been written by the witness in the course of his various avocations were produced, for the purpose of comparison of handwriting, and also of showing his habit of spelling.

The witness was briefly re-examined by Mr. KARSLAKE.—The window in the loft had never, he said, been opened, nor had he ever been in the room during the testator's lifetime. As to Buxton, he had never paid him

as regular wages more than 12s. a week. As to the papers at his house, he had never looked at them until the search for the book in which the codicil was found. He had never slept in the testator's house between the time of his death and funeral, nor ever had been in his bedroom during that interval. He had been once upstairs. He had never in his life, he said, made a will.

[Several copies of wills drawn by Nuttall and written out by the witness, with the original draughts by the testator, were produced and put in. Among them was the will of Luke Wilson, which is set out in the Appendix No. 5.]

The LORD CHIEF JUSTICE—How do you write daughter?

Witness spelt it correctly.

The LORD CHIEF JUSTICE—How long is it since you learnt to spell it so?—I believe I usually have spelt it with an “o.”

The LORD CHIEF JUSTICE.—So I perceive, and I observe that you spelt it so, even copying from the testator's draughts?—Yes, it was my habit.

The LORD CHIEF JUSTICE.—Even when copying draughts in which the word is spelt correctly; for I observe that the testator always spelt it right. Did you ever know him spell it wrongly?—No; except in the codicil, which is his handwriting.

This closed the examination of the plaintiff, which took up about four hours.

The next witness was the boy Champion, who was examined by Mr. FIELD, Q.C., in confirmation of the plaintiff's evidence as to the circumstances of the discovery of the third codicil in the stable-loft or lumber-room.

He sent for me and asked me (said the boy) if I could clean the window, and I said yes. I asked him to open it, and he said he did not think it had been opened since it had been painted. I think the window was undone, and he put his foot on a little log of wood and caught hold of the front of the window board, and it came very near out. He was pushing it back again, and I saw something and said, “What's that?” and I showed him a brown earthenware jar and a paper, and a yellow canvas bag. The jar was covered with cobwebs. He lifted it out and looked at it, and said, “I doubt it's some consequence.” I was going to leave the room, and he said, “Stop and see me count the money; perhaps you may be wanted,” and I heard the money jingle, and seed him count it, and he put it back again into the hole and locked the will up and left.

Cross-examined by Mr. Serjeant HAYES.—You had never cleaned the window before?—No.

And didn't clean it then?—No.

Didn't you say in the former trial that he said, “I don't think you can open it, as it has been fresh painted?” Did he say that?—I believe I asked him first.

You didn't say that before.

Mr. Richardson, a clerk to the Wirksworth Bank, who was well acquainted with the testator's handwriting, was examined by Mr. HANNEN, and deposed that he believed all the documents to be in his handwriting; and he also spoke to certain mis-spellings by the testator, though not of words in the will.

Cross-examined, he said the duplicates of the will were in the testator's

ordinary handwriting, which was free and flowing ; and he admitted that there was a difference in the three codicils, which were not written with the same freedom.

The LORD CHIEF JUSTICE observed that it was obvious upon inspection that the writing was of a different character.

Mr. KARSLAKE admitted that this was so, but elicited in re-examination, that the testator wrote different hands ; and he recognized the handwriting of the codicils as the testator's, although it was more formal.

One of the Jury.—Would you have paid checks with these signatures ? —I should.

Mr. John Wheatcroft, a land surveyor, gave similar evidence.

A large bundle of the testator's letters was put in evidence.

The Court then adjourned.

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#### FOURTH DAY, THURSDAY, FEBRUARY 25th.

Certain letters of the testator were put in containing instances of bad spelling, upon which, however,

The LORD CHIEF JUSTICE observed that many of these were such instances as most persons more or less were liable to fall into in hasty writing, and were rather instances of old-fashioned or doubtful spelling than spelling grossly wrong, as for example, "untill for until."

Thomas Haines was called to prove that the testator, who died in March, 1856, was about, and even out, in February.

Passages were then read from the shorthand writer's notes of the evidence of Buxton and Gregory on the former trial, as to the alleged endeavours of Else, the plaintiff, to tamper with them.

Buxton on that occasion said, "He wished us to keep the secret, and carry it to our graves, and promised us 20*l.* a year," and when asked what the "secret" was, he said, "I do not know."

Gregory said, "I do not remember whether there was a secret." "He said we had as much right to it as Marsdens." "We had no secret to keep."

Gregory was now recalled by the LORD CHIEF JUSTICE, and asked what he wrote with at the testator's when he signed his name to some papers, and he said he thought it was with a quill. He was directed to write his name, and did so.

Catherine Marsden, the testator's housekeeper, who took an annuity under the interlined bequests in the second duplicate of the will, and also under one or two of the codicils, was not called as a witness.

This closed the plaintiff's case.

Mr. Serjeant HAXES then addressed the jury on behalf of the defendants, the trustees of John Nuttall's family, who stand upon the will and contest the codicils. He observed that probably but for the untimely and unhappy death of John Nuttall, the residuary devisee under the will, the codicils never would have been set up, for the jury would not fail to have observed that they were found in succession after his death, and not one of them was brought to light before. The trustees under his will who were defending the interests of his children had been driven to do so, or to

abandon their inheritance, and had been forced into a long career of litigation in defence of their rights against Else, who set up these codicils. It was not for them to prove that they were forgeries. It was for Else, as he set them up, to satisfy the jury that they were genuine.

The LORD CHIEF JUSTICE.—Still they must be either genuine or forgeries, and virtually you must contend that they are forgeries.

Mr. Serjeant HAYES.—No doubt, but still the onus of satisfying the jury that they are genuine is upon the party who sets them up. The result of this remarkable series of codicils brought to light in so mysterious a manner was virtually to disinherit the family who took under the will, and to give the bulk of the real estate to Else. The codicils had been found in the order of their date, and in a sort of ascending scale, the first giving him a portion, the second more, the third, in substance, all. And this wonderful series of codicils were found one after the other in the order of their date, beginning a few weeks after the death of the residuary devisee under the will. Was there ever such a series of discoveries!—and all made in reality by the same person, and he the person who was mainly benefitted by the documents thus strangely brought to light. Some men, it was said, were lucky, others unlucky; but surely never was there a man in this world so lucky as John Else, finding all these codicils one after the other in strange out-of-the-way places—all different places—and yet discovered all in the order of the date, and all in his favour! The other person who took under the disputed dispositions was Catherine Marsden, and she had not been called as a witness. Where was she? It was suggested, forsooth, that she had taken to drinking. But what reason was that for not calling her as a witness? She had been in the house for the whole time between the will and the death—for the whole time during which these codicils were supposed to have been made, and for some time after the death, and until after the first two codicils were proved; and yet she was not called as a witness. The first two codicils had passed, not without suspicion. But the finding of the third in the hole in the wall was too much. What a place for a testator—a shrewd, sensible, man of business—to put his last will into! This third codicil virtually was a new will; it disinherited the residuary devisee under the will, and it was put into a place where no one would ever dream of looking for it. Such a discovery had probably never entered into the mind of the most startling sensation novelist of the day—not even of Miss Braddon. Serious as the case was, there were really parts of it which bordered on the ridiculous. Fancy a shrewd sensible man of business hiding his last will in a hole in the wall, where no one was likely ever to find it. Why, it would be a proof of insanity. It would almost suffice to set aside the will even if it were his. Who could really believe it? There were things which transcended the power of human credibility, and this was one of them. The testator had only two years before his death very carefully considered what his testamentary dispositions should be, and had made with care and with the aid of his attorney a rather elaborate will providing for every person who had any claim upon him among others for his housekeeper, for his two labourers, Buxton and Gregory, and for Else himself. Yet it was supposed that, without consulting his attorney or even disclosing it to him (even in a conversation a

few days before his death), and without any change of circumstances, or anything to alter his intention, secretly he had made in those two years not less than three codicils, virtually setting aside his will as regarded the real estate, and then, to crown all, hiding them in out-of-the-way places, and even in a hole in the wall, so as to prevent any one from finding them ! Nor was this all. His attorney, who had this conversation with him a few days before his death, "conjectured," he said, from his expressions that he meant to alter his will, and the testator actually made an appointment with him for the following day, very likely to carry out some alteration with the aid of his attorney, who had prepared the will. Was it credible that at the very time he had actually in secret made no less than three codicils, virtually setting aside his will so far as related to real estate, and that he should not say a word of these codicils to his attorney, and one of them—the last—hidden in a hole in the wall, where no one was likely to find it ? Then, again, after the death the pretended witnesses to the two chief codicils said not a word about them. Search made again and again for testamentary papers, and not any of them found, and the attesting witnesses silent ! Then, look at the internal evidences of the documents themselves. Else had certain habits of misspelling, quite different from the testator's, and these habits were found in the codicils, and not in the will—the word "daughter," for example, always written rightly by the testator, always written with an "o" by Else, and written in that way in the codicils. So of the word "possible," always spelt by Else with an "a" instead of an "i." These gross and habitual misspellings by him were quite different from the occasional lapses of the testator, which were rather cases of doubtful or obsolete spelling ; "musick," for instance, for music," "oweing," for "owing," and the like. But Else had the habit of gross and ignorant misspelling. For example, he invariably omitted the final "e" in words like "include," and this habit was found exemplified in the codicils. Moreover, he fell into the grossest errors of grammar and construction, whereas the testator always expressed himself with propriety. The learned serjeant referred to the letters of both at some length in illustration of his remarks, and then proceeded to the question of handwriting. It was admitted, he said, by Else, that he could and frequently did write very like the testator. He had been copying for him from his childhood, and people who copied much for others often insensibly adopted a similarity of handwriting ; indeed, one witness, whose evidence would be read—the auditor of a Poor Law Union—who had had thousands of specimens of Else's writings, and perhaps as many of Mr. Nuttall's passing under his eyes, said he had occasionally seen writing of the one so like the other, that he could not tell which had written it. Notwithstanding this general similarity, however, there was in general a marked difference. The one wrote the free hand of the master, the other the formal hand of the copyist ; and it was only when Mr. Nuttall happened to be writing in a formal way, as when he was himself copying, or was writing a kind of surveyor's hand, that any such similarity could be observed. How remarkable, then, if these documents were genuine, that in writing out the two copies of the will, both of greater length than the three codicils put together, that Mr. Nuttall should have written in his usual beautiful masterly free running hand—a hand which it would take indeed an

accomplished forger to imitate—that in the undisputed interlineation in the one copy of the will, which was found embodied in the text of the other copy, the same habit should be preserved; but that in every instance in which the instrument or alteration itself is from extraneous circumstances suspicious, he should have happened to make use of the cramped, stiff, formal hand which alone could be imitated by Else? He would call before them witness after witness of the highest respectability—men of business, men who knew Mr. Nuttall well, who corresponded with him on matters of business, who acted on his letters—who would tell them that in their judgment and belief neither the interlineation nor one line of the codicils was in Mr. Nuttall's handwriting, and he would put in evidence the testimony of Mr. Stone, the Poor Law Auditor, given at the former trial, who had a perfect familiarity with Else's handwriting, and who had pledged his oath that he believed interlineation and codicils to be all in Else's handwriting. He begged the Jury to contrast the number, character of these witnesses, and the opportunities of forming a correct judgment they had enjoyed, with the testimony of Mr. Parkin, almost the only person who could be found throughout the county of Derby to say that he believed the disputed instruments were written by the testator. He begged also their particular attention to the signatures of the three codicils, identical in character and perfectly different in character from the free, light, beautiful touch of the testator's signature. The bank clerk had said he would have paid on those signatures, but he asked the jury to judge for themselves. The test was not a satisfactory one. Bankers cannot be "nice" as to what signatures they will accept and what they will refuse. They pay far more on the assumption that things are all right, than on the examination of the particular signature; and with all the interest they have to be careful, they are frequently deceived. He would show them, beyond the shadow of a doubt that these signatures were patched and painted; and as a witness had said on a former trial, "Drawn, rather than written." It might be said that the testator was already failing in health, and in fact in his last illness, and that the difference might thus be accounted for—but he produced them, probably the very last signatures the testator ever wrote—a short letter to Mr. Thelen of the 16th February, a long letter to Mr. Melland of the 23rd February, and a letter two lines in length—the last he ever penned to Mr. Chinery, the medical man, now unfortunately dead,—saying that the testator was very unwell, and requesting Mr. Chinery to call, written on the 25th February, only ten days before his death, and characterised by the same free, light, and yet determined habit as the signatures of his best and healthiest days; as different from the clumsy, painful, faltering strokes of the forger's hand as light from darkness. But there was yet another head of evidence on this point to which he must call attention, namely, that of persons who had made handwriting the object of their special study. Such evidence had fallen into some disrepute from the fact of witnesses of this kind having been too apt to give their own opinions and conclusions as grounds for a jury to act upon. He did not propose to ask the witnesses of this kind one question as to their own opinion; he would rather ask and have the opinion of the jury. But the evidence of such persons was, when properly used, most valuable, because they would detect minute and mechanical

characteristics of one handwriting and of another which, when pointed out, every one who heard them was as capable of judging of as they were themselves, but which yet would escape the notice of common observers. Fortunately, by the aid of photography, he was able to lay before the jury copies of the will and codicils, almost as useful for this purpose as the originals, and they would be able to follow for themselves every remark made by the witnesses, and to judge by their own observations whether or not it was borne out by the documents before them. And it was remarkable in this instance, that though the testator was said to have written in two hands—the stiff hand and the running hand—which to ordinary observers appeared unlike,—that though the testator's stiffer hand and Else's were so far alike, that to Mr. Stone, even, they appeared undistinguishable ; he believed it would be shown, and shown to their entire satisfaction, that the minuter characteristics of the respective hands discovered by the kind of analysis with which he was dealing, prevailed alike in the stiffer and in the running hand ; so that when examined in this way, it was equally impossible to distinguish the testator's two handwritings, and to confound his stiffer writing with Else's, however like they might appear to the superficial observer. He did not wish then to go into details, but there was one fact of this order too remarkable to be passed over. They would remember there was a key-word to the two writings so far as spelling was concerned,—the word "daughter." It was very wonderful that there should be also a key-word as regarded mere handwriting, but still more so that it should be one of the shortest and commonest of all words in the language, the little monosyllable "to." He would show them that there was a habit of Mr. Nuttall's with regard to the crossing of the letter "t" in that word "to," and he confined his remark to that word, and was not speaking of the crossing of "t's" in general—and a habit of Else's with regard to the same thing—and that these two habits were so predominant and fixed, and so different, that by the simple application of this test it was impossible to help distinguishing with infallible certainty the two handwritings. The testator's habit was to leave the "t" in the word "to" wholly uncrossed. He sometimes, but very rarely, crossed it *through*, the cross extending on each side of the downstroke. He half-crossed it, beginning the cross at the downstroke so seldom, that practically you might say he never did it. Else sometimes, but very seldom, left it uncrossed ; he also sometimes, but very seldom, crossed it wholly, his cross extending right and left ; but in at least 80 instances out of 100 he would only half cross it. Now if that was made out to their satisfaction, it was not easy to overrate the importance of the observation, because in the little epitome, the disputed portions of which offered so small a field for observation, that it was almost unreasonable to expect that they would afford any safe-ground, on mere inspection of handwriting, for pronouncing them to be forgeries, the prevalent habits of the two men were distinctly shown. The word "to" occurs fourteen times in the undisputed, seven times in the disputed parts of the epitome. In thirteen instances out of the fourteen the "t" was uncrossed ; in the remaining one instance it was doubtful, from its proximity to the word "personalty," whether the "t" was uncrossed or whole crossed ; but in every one of the seven instances in which it occurred in the disputed portions it was half-crossed, in the

fashion which the testator never used but Else almost always did. In the interlineation also, the "t" in "to," (which word occurs three times) is in every case half-crossed, in Else's fashion. The circumstantial evidence, he contended, whether external or internal, was all against the codicils, and all the probabilities of the case pointed to forgery. Recurring to the external history of the case, he noticed that the first codicil, dated October, 1855 (just a year after the will) recited the devise of the annuity to Else interlined in one of the duplicate wills; and then gave to Else the very estate on which the annuity was charged. And then the interlined duplicate was in an envelope endorsed, "This is my 'rigt' will." His "rigt" will! Why the will was virtually set aside by the codicils; and if they were genuine he ought to have written, "This is my 'rong' will." (Laughter.) The case hung upon the interlineation in the duplicate will. It was the commencement of the forgeries. It was evidently spurious. It was admitted that it was in a different handwriting from the will, and in the same handwriting as the codicils, and they, it was also admitted, were in a different handwriting from the wills. Moreover, the interlineation was made in such a bungling way as to be nonsensical. It was thrust into the midst of another devise. There—was the bungling of the crafty but clumsy forger. Craft was quite different from true ability or skill, and was often, as in this instance, blended with the grossest ignorance; and thus it was that its blunders betrayed itself. The man who drew these codicils and that interlineation, did not know their legal effect, and they destroyed each other. Besides, if the interlineation was genuine, why was it not in both duplicates? The presumption was against an interlineation. So the Privy Council had held in a great will case some years ago. Common sense said so, especially when the handwriting was different, but, above all, when there were two duplicates of the will, and the interlineation was only in one. But, taking the interlineation to be genuine or not, it told strongly against the codicils, for they were inconsistent with it. If the interlineation was genuine they were not so, and no one could doubt that if the interlineation was forged they were so, for the handwriting was obviously the same. The testator was supposed to have interlined in one duplicate of his will a bequest of an annuity to Else, and not to have inserted it in the other; then by the first codicil to have given the estate on which it was charged to Else; and then to have fastened up the interlined duplicate with the endorsement, "This is my rigt will,"—and to have kept it so fastened up and endorsed till the day of his death! It was difficult to conceive a greater combination of inconsistency and absurdity. Then as to the codicil itself. It was dated in October, 1855, and besides giving a large property to Else, it professed to provide for the death of one of the devisees under the will, (Sarah Holmes) and to give her bequest to young Newbold, with an annuity to his father, the attorney. But Sarah Holmes had died in February, 1855, the codicil was dated in October, and there could be little doubt that there had been a real codicil not long after February, which was probably the one Buxton and Gregory had witnessed. Probably it had been found with the will; at all events it had been destroyed, and then they had been induced to say that the document they had witnessed was in October, whereas they had originally said it was in May. Then

there were discrepancies between the epitome of the will (found with this codicil) and the will. Most of it was genuine, but some parts were added ; and in these there were blunders which betrayed the interpolation. In the codicil, moreover, the testator was supposed to have mis-spelt his own attorney's name, whom he had known all his life, "Clifford" Newbold for Clifford. Perhaps the fact that the attorney took under the codicil, might have made him blind to these blunders. Then as to the attesting witnesses of the first codicil, the two men Buxton and Gregory, it was impossible to rely upon their evidence ; and as they were the attesting witnesses they were Else's witnesses, and taking his own story to be true they were not to be relied on. According to him they had asked to be paid for adhering to the truth. It was much more likely that it was sticking to a falsehood ; but, in either view, what was their evidence worth ? Then, as to the finding of the first codicil among the papers left at Else's house by John Nuttall ; how was it that John Nuttall had not discovered it ? As to the second codicil, said to have been found at Newbold's, how was it that Newbold had not discovered it ? The account given by Else as to the finding of the second codicil in the book, teemed with contradictions. He swore at Derby that he took it up and laid it on the desk. He swore yesterday that he never touched it nor had it in his hand before it was laid on the desk. And on both occasions he swore he had not examined the book when it was found. Why not ? He had been anxious to find it. Why did he not look at it when he got it ? Then as to the third codicil, found in the jar in the hole in the wall. What could be more utterly incredible than the whole story ? "What's that ?" said Else. "What's that in the jar ? Why, a codicil, to be sure ! What else could it be ?" (A laugh.) In a jar, in a hole in the wall, "covered with cobwebs," of course, what could it be but a codicil ? (Laughter.) This finder of codicils, who seemed to find nothing but codicils—what should it be but a codicil, and a codicil in his favour ? (Laughter.) In a hole in the wall ! Why, it might not, but for this miraculous discovery, have ever been discovered at all. Not until the house was pulled down, a century hence, perhaps. What a place for a man of business to put his last will in ! But what would the jury say when he told them that he would prove that an iron vice, weighing about 60 lb., was in the testator's lifetime screwed over the window-board under which the hole was found, so that the testator, two months before his death, labouring under an abscess in his back (which he described in one of his letters as five inches long, three inches broad, and one-and-a-half inches deep), must have gone up to that loft, unscrewed this vice, lifted it up, made the hole in the wall, deposited the jar with the twenty sovereigns, and the codicil, then covered it up and screwed the vice over it again ; and all this to prevent anyone from ever finding it ! (Laughter.) The hole in the wall ! Why, imagination could hardly go beyond it. No more codicils had been found since, and one great blessing of these Chancery proceedings had been that it had stopped the finding of codicils. (Laughter.) But for them a fourth codicil must have been found. It must have come. The second and third had each been found after nine months—the usual period of gestation—but, perhaps, as there was so little of the property still left to be disposed of, this might have been only a "seven months'" codicil. (Great laughter.) It was certainly difficult to conceive where it

could have been found. (Laughter.) One could hardly imagine any more obscure place for secreting another codicil. Perhaps, however, in Job Knowles' quarry, while his men were blasting the rock—with gunpowder, of course—in some fissure Else might have seen an antediluvian toad sitting on something (laughter), and said, "Bless me, what is that?" (Great laughter.) Why, what could it be but a codicil? (Roars of laughter.) If ever he found anything anywhere, it would certainly be "a codicil." (Laughter.) However, thanks be to Heaven, no more codicils had been found. And could the jury really believe the stories told as to those which were found? They must have a strong credulity to swallow them all. Much of the evidence given in support of the codicils would be proved to be untrue. For example, the evidence of the young Knowles's, that in January, 1856, the testator came down to see their father twice in one day during the Christmas holidays, must be a mistake as to time, for it would be proved, under the testator's own hand, that during those holidays the testator was confined to his house by rheumatic fever. No doubt, there was strong reliance placed by the plaintiff on the evidence of the attesting witnesses, Knowles and Adams. But there were many circumstances to show that the jury could hardly place so much reliance on their evidence as to outweigh all the circumstantial evidence in the case. There was this strange fact—that neither of them had ever mentioned the codicils until they were brought to light. These codicils, it is singular, dealt only with the real estate. Nothing personal was touched. Again, the three codicils were all in the same hand, and a hand differing from that of the will. How was it that three codicils, codicils supposed to be made at different times, so exactly resembled in handwriting, and that neither of them in the least resembled the will? Why had not these attesting witnesses mentioned the two codicils they had attested. Job Knowles said he did not like to "make mischief," or betray the testator. What mischief would it have made? But he did say, it was alleged, that there were "other papers." Why should he not have been silent, if he feared to make mischief? Or why should he not have said more than he did? As to Mr. Adams, he was not a regular practitioner, not a member of the College of Surgeons or the Company of Apothecaries, a person not a qualified practitioner and of no property; what was there in his position or character to make his testimony utterly unimpeachable? So far from it, our own immortal Shakespeare, who knew more of human nature than even Chief Justices (laughter), put into the mouth of a "poor apothecary" the sentiment,—

"My poverty and not my will consents."

(Laughter.) Such was Shakespeare's idea of a reduced medical practitioner. (Laughter.) It must not be taken, then, that Mr. Adams's evidence was necessarily above suspicion, and his evidence was directly opposed to that of Knowles, for he swore that he had no notion it was a testamentary paper he was attesting. Knowles swore he told Adams what it was. There was a direct contradiction. Again, Knowles said he was there first, and for some time; Adams, on the contrary, swore that he was there first, and for two or three hours before Knowles came in. These were matters too simple to be a mistake; they were flat, direct, downright contradictions which could not be reconciled with truth. Again, Adams's reason for not

mentioning the matter was a good one, if it were true, that he did not know what it was. But then it was not true, for he did know. Knowles's reason was an absurd one—that he would "not betray" the testator, as if it were not betraying him to suppress his codicils, supposing they were his. Again, let the jury take the codicils in their hands, and they would see that the signatures of Adams and Knowles were directly beneath the attestation clause, describing the codicils as "annexed to my last will and testament." How could he have failed to see that he was attesting testamentary documents? Knowles did not pretend that he did not know, and swore that he told Adams so, but Adams swore he had not an idea of it. Thus, both these witnesses contradicted each other, and contradicted the obvious truth. Nor was this all. Adams swore he was attending the testator at the time of the two codicils in January, 1856. But there was a letter of the testator, dated in February, in which he said, "Luckily, I have no medical man attending me;" and there was a later letter, the last he wrote, to another medical man, now dead, "I feel very unwell; I should be glad if you would come to see me." It was not true, then, that Adams was attending him, and these various contradictions showed that his evidence could not be relied upon. And then look once more at the contents of these codicils! Mis-spelling the name of his own attorney, and spelling tithe commutation, "tith commuation." Why, the man was a land surveyor, who had been concerned in tithe commutations, and there were 30 or 40 letters of his to the Tithe Commutation Commissioners, all correctly written. Why, it was as bad as if a London stockbroker should spell Consols with a "u," and thus make a Roman Consul of the Three per Cents! (Great laughter.) Then, the simple word, "daughter," which the testator never mis-spelt—why, the writer of the codicils always spelt it "doughter" until (said the learned serjeant), not a "doubt" could remain. (Much laughter.) If they could show a "doughter" of the testator's or a "daughter" of Else's he would give up the case. (Great laughter.) Could the jury be doubters? (Continued laughter.) Could they swallow all this tissue of monstrous fabrications and ridiculous inventions? Could a special jury of the City of London readily credit all these incredibilities? Let them look at the broad probabilities of the case. Why should the testator in the course of the two years before his death dispossess his cousin and namesake, and give the bulk of his real estate to this Else—who was nothing to him, and to whom he had already, with others, left a legacy? On the contrary, it would be proved that the testator, the last time he was out, said "You will have a Nuttall to succeed me." There was something which could not deceive. There was the expression of the testator's last and real intentions. There was his mind and his intentions placed beyond a doubt, and very lately before his death. In conclusion, the learned serjeant, who had spoken with great energy and vivacity for upwards of five hours, declared that he deeply deplored his own inability to deal adequately with this great cause. There sat on the bench, however, one who, as an advocate, had often displayed his great powers in causes of this magnitude; and he would throw upon it the light of his clear and practised intellect. Earnestly he hoped (said the learned serjeant) that the result might be to defeat this odious and deep-laid scheme of forgery and fraud, by which it was sought to deprive the fatherless of

their inheritance. Earnestly he hoped that in this great cause justice would ultimately triumph ; justice, the great bond of society, the dread attribute of the Most High ! Earnestly, in his innermost heart and soul, he hoped that the jury, who had given to the cause their deepest and closest attention, would by their verdict finally destroy this fabric of falsehood and establish, what he firmly believed to be the cause of justice and of truth.

The first witness called for the defence was Stephen Melland, who was an old friend and relative of the testator. He was examined by Mr. Serjeant BALLANTINE, and stated that he was at the testator's house on the evening of his death, with Knowles, Newbold, and others, and searched the cupboard and the desk. The papers were in very regular order, but at first they did not find the will. At last Newbold (who said it must be there) found it in a book. They then looked no further. Knowles said there must be something else, as the testator had once deposited a paper with him which he supposed was his will, and which he afterwards had back again. After the funeral Knowles said they had found another will. This was the duplicate with the interlineation in favour of Else, and which was in the envelope endorsed, "This is my right will." On seeing the interlineation witness asked them "Why they gave the preference to that?" And then they showed him the endorsement. Witness was well acquainted with the testator's handwriting, and the will, no doubt, was his, both copies of it—except the disputed interlineation in one of them, which was not like his handwriting, and he did not believe it to be his. He did not believe either of the codicils to be in his handwriting. As to the epitome, the greater part was in the testator's hand, and upon seeing it in a hasty way at Derby he had answered generally that it was all so, but on careful examination he found parts which were not so, and these he pointed out.

The witness was cross-examined by Mr. KARSLAKE. He said he had been sent for by Newbold, the attorney, and he suggested a search for the will, and burst the staple of the cupboard lock in order to make the search. The cupboard was full of title-deeds, papers, and account books. They were looking some time before they found the will in an envelope in a tithe book. He could not say positively it was a gummed envelope. [The tithe books were produced, and they were large folio size—that is the size of a sheet of foolscap.] He knew the testator's handwriting from corresponding with him. He lived at a distance from him.

The LORD CHIEF JUSTICE put into his hands a book containing some writing of the testator's, which he said he did not recognize as his.

The Court then adjourned.

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## FIFTH DAY, FRIDAY, FEBRUARY 26th.

The examination of witnesses for the defendants was resumed.

George Walton, examined by Mr. WILLS.—I am a cordwainer, at Matlock. I knew the late Mr. George Nuttall. My son keeps a butcher's shop at Matlock. About three weeks before his death, Mr. Nuttall came to my son's house to pay a bill. He was leading his pony—he asked me to hold it. He went in and had some discussion with my son, after which he paid him his bill for meat. He came out to me—he could not get on his pony, but took the reins out of my hands to lead him home. I said "you're

very poorly, Sir," he said "If there is not an alteration, George, I shall never come any more," I said "more's the pity, Sir," and he answered "you will have another Nuttall when I am gone." The will produced by John Marriott is one that Mr. George Nuttall made for me many years ago.

Cross-examined by Mr. KARSLAKE.—I told this to the lawyer a few weeks ago. They came to ask me for the will Marriott had, and then I told them. I was convicted for poaching two or three times. It is ten or fifteen years ago.

Hannah Brown, examined by Mr. Serjeant HAYES.—I was servant at Mr. George Nuttall's six or seven months before he died. I remained in Miss Marsden's service, and afterwards in Mr. Else's for about twelve months after he died. Mr. Adams used to attend Mr. Nuttall, before December. In December Mr. Nuttall told me, "Hannah, when you see Mr. Adams coming in at the gate again you'll come and tell me, and I will go out of the room, and then you can go back and tell Mr. Adams I am not in." After this I don't remember Mr. Adams coming again. Mr. Knowles came occasionally, but always in the morning. I was always at home on Sunday evening. I went to church in the morning. I never remember Knowles being there on a Sunday evening, nor do I ever remember him and Adams being there together. I never straightened Adams's hat for him when the pony threw him. I never lighted him and Knowles to the stable to get the pony. Between Nuttall's death and his funeral Else was often in the house. I knew the room next the hay chamber well. Flour used to be kept there in two large jars. I used to go and fetch it. The key was kept in the cupboard in the dining room, which was not locked. Miss Marsden would fetch the key and go to the room, and I went with her and fetched the flour. I was in that room about a fortnight before Mr. Nuttall's death. There was then a large vice screwed on to the window-board. It was still there at Miss Marsden's sale, a few months after my master died. There were five or six pots and pans also, then on the window-board, sticking to the paint.

Cross-examined by Mr. KARSLAKE.—I was in Court, but not examined on the first trial. I was examined on the second trial. I did not say then a word about the vice or the paint pots. I have seen Catherine Marsden go to that room about ten times. She went when we wanted to bake, which was about every week. I always went with her. Sometimes she would go by herself,—generally I went with her. I have seen her take the key produced and go with it. I don't remember saying on the last trial that I never saw her take the key and go with it. I don't remember saying I never went myself. [Passages of her examination read where she did say so.] I never saw Job Knowles there of an evening. The parlour where Mr. Nuttall sat was at the front. The back-door was close by the kitchen. There was a door between the kitchen part and the front of the house. Miss Hall was a friend of Miss Marsden's. She came to assist in the cooking between the death and the funeral. She did not sleep in the house.

Jacob Gregory, examined by Serjeant BALLANTINE.—I am a draper at Matlock Bath. I remember Miss Marsden's sale. There was a pair of vice on the window-board of the room next the hay chamber, at the sale. [Vice produced.] Those is them. I thought of buying them. They were

too big for me. They were fast to all appearance to the window-bottom.

Cross-examined.—I have kept a shop ten years : my wife keeps the shop, and sometimes I work on the railway.

John Stephen Hall, examined by Mr. WILLS.—I bought the vice produced at Kate Marsden's sale : they weigh about 60 lbs. I have a receipt for the money.

Cross-examined.—They were out in the yard when I bought them.

George Palmer Churcher, examined by Mr. WILLS.—I am an architect and surveyor in South Molton Street. The model of the window where the third codicil was found, which stands outside the court, was made from my measurements, and made under my superintendence. It is a fac-simile of the original. I took the measurements two or three months ago. When I took them, there were two screw holes about the middle of the window-board, which are shown on the model. There was a broken screw in one of them. Within the last day or two, I have fitted the vice produced on to the window-board. It fits exactly, screw holes and all.

Cross-examined.—The window goes up above the ceiling. The height of the ceiling is six feet eight inches.

George Shaw, examined by Mr. Serjeant BALLANTINE.—I am executor and devisee in trust under John Nuttall's will. I knew him very well. We were both employed under Messrs. Myers, the contractors. He was a very active, clever, intelligent, business-like man, and rapidly rising. He superintended the removal of the Crystal Palace to Sydenham, and at the time of his death was employed in superintending a mansion Messrs. Myers was erecting for Baron Rothschild, at Paris. He could speak French well, and was a very superior man. He died on the 12th April, 1856. I applied to Job Knowles for the rent of the quarry. He refused to pay. I asked why ? and if he had any documents to show ? He said, no, but that Mr. George Nuttall had promised him in his lifetime that he should have it rent free.

Cross-examined.—He did not say he was entitled to have it rent free.

By the LORD CHIEF JUSTICE.—He said he would stand upon Mr. Nuttall's verbal gift. I told him we should enforce the rent. I gave instructions to our solicitor, and the action was ripe for trial, when out came the third codicil which gave the reversion of the quarry to Else.

Sarah White, examined by Mr. Serjeant HAYES.—I live at Matlock. Mr. Alfred Richards used to lodge at my house. He lodged with me nine years, and remained with me up to the time of his death. Mr. Nuttall used to visit him two or three times a week. Richards was buried 23rd November, 1857. I remember the first codicil being found. On the Thursday before I first heard of its being found, Else came to ask Mr. Richards to dine with him on the Sunday. I told him I did not think Richards would be able to go, because he had not been able to leave his bed before, during that week. He went upstairs to see him, and when he came down he said he would tell Samuel Hardy, after he had taken Mr. Greaves in his fly from church on Sunday, to come and fetch Mr. Richards. On the Sunday Hardy did come, and took Richards to dinner, and brought him back at night in the fly, about nine o'clock. I heard nothing of the codicil till the Monday. Mrs. Else came on the Monday, and talked to Richards. I saw Else on the Thursday. He said, "We found

the codicil about five minutes after Richards was gone, but we did not know anything that was in it till you saw me go down to the Bath yesterday morning." I had seen him on the Wednesday morning with a lot of papers in his hand. He said, "Not till you saw me go to the Bath for Mr. Newbold to break the seal."

Cross-examined.—My niece owned the house. She lived in London. The house belonged to my brother. I had lived there with him, and when he died I continued to live there. Richards paid me 3s. a week to do for him. He never dined the Sunday before at Mrs. Hodgkinson's. He was confined to his bed the day after he went to Else's, and for a long time after. Mr. Brown, the surgeon, visited him sometimes. It was, "How d'ye do," and go again. I don't remember Mr. Brown visiting him in a fly on the Monday. He certainly did not come to see him every day that week. He did not call twice on the Sunday in question and find him in bed. Richards was rheumatic. He was never out of his bed, except when lifted out for fourteen months before he died. When his hands were in that way he could do nothing for himself.

By the LORD CHIEF JUSTICE.—Charles Branson helped to lift him into the fly. I helped to carry him. He was on the second floor.

Charles Branson, examined by Mr. Serjeant BALLANTINE.—I knew Mr. Richards. I once helped him into a fly on a Sunday, but I do not know the year, or the time of the year. Mrs. White asked me to do it. She fetched me. It was after the morning service, and it was Hardy's fly. I do not know where Hardy's man is.

By the LORD CHIEF JUSTICE.—I remember hearing of Mr. Nuttall's death. This was after his death, but I cannot say how long.

John Bromley, examined by Mr. WILLS.—I am a land agent and surveyor at Derby. I knew Mr. George Nuttall well. I have received many letters from him. I produce a number of them. I am very well acquainted with his handwriting. I recognize the will and the duplicate will as his handwriting. I believe the interlineation in the duplicate will, parts of the epitome, and the three codicils to be not in his handwriting.

Cross-examined.—I have made no selection of his letters, but have produced all I have. My knowledge of his writing is derived from corresponding with him. (Shown a book containing entries in Mr. Nuttall's handwriting.) Never saw him write so small or so upright as this. I do not think it is his—(shown another)—nor that—(shown another)—this is more like, but it is not so like the letters that I can give a positive opinion. (Shown another.) This is too small a quantity for me to give an opinion. It is something like, but not written in the same free way as the letters I have received.

George Unwin, examined by Mr. Serjeant HAYES.—I am a land agent and surveyor at Whitwell. I knew Mr. George Nuttall, and had business transactions with him. I have had letters from him. These I produce are all I could find. He was a man of ability and business habits. I have seen the two copies of the will. The signature is in his ordinary handwriting. There is a peculiarity in his signature. The top of the capital "G" is thrown up, and the bottom of it ranges with the top of the other letters. The crossing of "tt" is generally at the top of each letter, crossing right through, extending some little distance right and left. The

interlineation has not the character of Mr. Nuttall's handwriting. I think the signatures to the codicils are not Mr. Nuttall's.

Cross-examined.—I have not had to act upon his letters for 14 years past : the letters I produce are as far back as 1835.

Joseph Grattan, examined by Mr. WILLS.—I am a surveyor. I knew Mr. Nuttall well. I have corresponded frequently with him. I produce a number of letters from him, and also a number from Else. Mr. Nuttall was a methodical, accurate, business-like man. The writing and the signatures of the will and duplicate (except the interlineation) are in his ordinary free running hand. The interlineation and the codicils are not, I think, in his handwriting, nor the signatures. He very rarely made mistakes in spelling. I have counted over the words in the letters of his that I have, and I find that in more than 3500 words there are only three trivial errors in the spelling.

Cross-examined.—I know his hand from correspondence only. I have received perhaps over 40 letters from him in 35 years. That would come to one and a fifth per annum. I can give you, if you like, the average number of words in a letter. I think his "k" is peculiar. (The witness pointed out several other characteristics of Mr. Nuttall's handwriting.) I was called on the first trial, but not on the second.

Robert Bromley, examined by Mr. Serjeant HAYES.—I am in partnership with my brother, Mr. John Bromley. I knew Mr. Nuttall very well. I produce a great number of his letters to me. He was a clever, accurate, careful, business-like man. The will and duplicate (except the interlineation) are in his ordinary hand, and the signature, his ordinary signature. I think the interlineation and the codicils are not his handwriting, nor are the signatures his. I never saw that heavy dash to the "tt."

Cross-examined.—(A book shown him with some extracts in Mr. Nuttall's handwriting.) I think some of this is not written by him : it appears a stiffer hand. The codicils, also, are in a stiffer hand, and have less freedom than the wills.

John Cutts, examined by Mr. Serjeant BALLANTINE.—I am an attorney at Chesterfield. I succeeded my father in business there. I produce a number of Mr. Nuttall's letters. I know his handwriting. I think the interlineation and the codicils are not written by him, and I think the signatures to the codicils are not his.

Cross-examined. I was out of my articles in 1846. I then left Chesterfield and went to London, where I remained ten or eleven years. I never myself received a letter from Mr. Nuttall, (Shown a signature of Mr. Nuttall's.) This is a genuine signature I believe, it resembles much what I have seen.

The evidence of Mr. Richard Stone, given at the second trial was then read, by consent, from the shorthand writer's notes, Mr. Stone being too ill to attend. The material parts were as follows :—"I am auditor of the Poor-Law Union, in which Bakewell and Matlock are situate. I am very familiar with Else's handwriting. I have had thousands of specimens of his writing under my notice. I believe the interlineation and the codicils to be in his handwriting. I have seen writing of his that I could not tell from Mr. Nuttall's, and writing of Mr. Nuttall's that I could not tell from his. Sometimes they wrote very much alike, indeed."

Elizabeth Thelen, examined by Mr. WILLS.—My husband is a tailor and draper at Derby. I produce a quantity of letters my husband received from Mr. Nuttall, and also a quantity from Mr. Else.

William Adam, examined by Mr. WILLS.—I live at Matlock, and am a geologist.

Mr. Serjeant HAYES.—This gentleman, my Lord, is called to produce a will, in fact, to prove his own will. (Laughter.)

The LORD CHIEF JUSTICE.—Oh, I thought it was the codicil which you opened yesterday, brother HAYES. (Great laughter.)

The late Mr. George Nuttall made a will for me in 1852. I produce it. It is witnessed by Mr. Nuttall and Catherine Marsden.

Charles Upham, examined by Mr. WILLS.—I am a clerk in the Tithe Commutation Office. I produce a file of correspondence relating to the commutation of the tithes in Darley and Rowsley parishes.

Benjamin Gay Wilkinson, examined by Mr. WILLS.—I am one of the attorneys for the defendants. I have made every effort to obtain specimens of Mr. George Nuttall's handwriting and of his signatures. Wherever I could I have subpoenaed the persons having documents or letters in his handwriting to produce them. I have made similar efforts to get specimens of Else's handwriting. Wherever I have been able to hear of a will made by Mr. Nuttall or by Else, I have subpoenaed the proper persons to produce them. I have besides in my possession a quantity of writing by Mr. Nuttall and by Else which came to me from Mr. Gray, who had charge of the case before I had, and with respect to which I can only prove the handwriting by persons acquainted with it. It is all in Court. There is amongst it a schedule of title deeds made by Mr. Nuttall, which is the stiffest and most formal specimen of his handwriting which I have been able to meet with. I have examined the will, the interlineation, the epitome, the codicils, a quantity of Mr. Nuttall's letters and documents, a quantity of Else's letters and documents, Luke Wilson's will and Samuel Statham's will, with respect to a peculiarity in the word *to*. In 50 of Mr. Nuttall's letters, taken at random, and without any selection, the word *to* occurs 145 times. In 131 instances the "t" in *to* is uncrossed, in 14 instances it is crossed right through, the cross extending right and left on each side of the downstroke, and in no instance is it half-crossed, the cross beginning at the downstroke and extending to the right only. In 28 of Else's letters, also taken at random, it is uncrossed 10 times, it is crossed right through 28 times, and it is half-crossed 88 times. (The witness went on with evidence on this point, which may be tabulated as follows:—)

	No. OF TIMES THE "T" IN THE WORD "TO" IS		
	Uncrossed.	Whole-crossed.	Half-crossed.
50 of Nuttall's letters	- - 131	14	0
28 of Else's letters	- - 10	28	88
Luke Wilson's will (written by Else)	0	2	26
Statham's will (do.)	- - 1	0	15
Nuttall's will	- - - 51	5	0
Interlineation	- - - 0	0	3
Undisputed part of the epitome	13	1	0
Disputed part of the epitome	- 0	0	7

First codicil	-	-	-	0	16	10
Second codicil	-	-	-	0	11	2
Third codicil	-	-	-	12	6	4
Nuttall's schedule of title deeds				63	7	2

The two half-crossed "t's" in *to* in the schedule of title deeds, are the solitary specimens I have been able to find of a *to* in which the "t" is half-crossed by Mr. Nuttall. I have also examined the correspondence with the Tithe Office. It contains 28 of Mr. Nuttall's letters and two of Else's. Of the 28 letters, several extend over three and four sides of foolscap, and they contain no mistake in spelling except *seperate* three times for separate, *stile* for style, and *exempt* for exempt. The words "tithe commutation," are invariably spelled correctly, and they occur very often. The two letters of Else are of about five or six lines each, and they contain three mistakes in spelling: "gentlemen" has been spelled "gentelman"—the "e" has been scratched out, and it is "gent-lman;" the word "then" has been written instead of "than," and "assistant" is spelled "assisstant." I have examined the County Court returns made by Else. The word "daughter" occurs 23 times; "shaws caws" is written for "shows cause." (The witness pointed out several other mistakes in spelling.)

Cross-examined.—I do not know Mr. Nuttall's handwriting, except from having seen a great deal of it in this cause.

Charles Chabot, examined by Mr. Serjeant HAYES.—I am an engraver and lithographer, and have made handwriting my study. I have examined the wills and the three codicils and the epitome very carefully. I have also seen a number of Mr. Nuttall's letters, some 50 or 60 of those produced to-day. I have become acquainted with the characteristics of Nuttall's handwriting, and with those of Else's. The same characteristics occur in all Mr. Nuttall's handwriting. The letter "r" is very characteristic. It begins with a large loop thrown up above the line, though it often degenerates almost into an "i." Else's is quite different. It is the careful "r" of the schoolboy, with a very flat regular bar to it. I find in the will Mr. Nuttall's "r" predominate—in the codicils and the disputed part of the epitome, Else's. In the letter "p" Mr. Nuttall seldom lifts his pen at the bottom of the downstroke, Else almost always does, and makes the letter in two members. The same distinction prevails between the will and the codicils. In the capital "E," Else occasionally ends it with a heavy dot; Mr. Nuttall never. In the disputed part of the epitome, in "J. E. by codicil," in "3 fields in Darley to J. E.," and in "J. E. paying to," the heavy dot occurs. In the other instances it wants the freedom of Mr. Nuttall's "E," which was quite consistent with Mr. Nuttall's habit of terminating a letter. The same thing occurs in the "C" of "J. C. N.," in the disputed part of the epitome. As to the signatures, I find Else had a habit of frequently placing a strong comma after his signature. There is no such habit with Mr. Nuttall, though he puts a full stop (which would be correct) occasionally. When he does so, it is a very light touch. In the signature to each codicil there is a strong comma after "Nuttall." (The witness went on to point out distinctive peculiarities of the two hands in respect of the letters "g" and "a" and of the word "the," which would scarcely be intelligible without a diagram.) He then proceeded: Where

Mr. Nuttall prints a word with a "v" in it, as in "give" and "devise," the "v" is made in one stroke, with no break at the bottom. Else almost always breaks it at the bottom. This distinction prevails between the will and the codicils. It is the same with the figure 8.

At this point the case was adjourned.

## SIXTH DAY, SATURDAY, 27th FEBRUARY.

Examination of Charles Chabot, resumed by Mr. Serjeant HAYES.—There are marks of imitation in the codicils. There is a change of habit in them. In the second codicil, for instance, there are in the first eight lines four sorts of "y's." From the eighth line to the end, and all through the third codicil, the "y" is similar to Mr. Nuttall's. I observe generally that the letters are carried in the codicils up to the top of the line, which is not the case with any of Mr. Nuttall's writing I have seen. Then the slope in all three codicils is very uniform—less sloping than the general slope of Mr. Nuttall's handwriting in the will and letters. I have turned my attention to the signatures. I have seen a great quantity of Mr. Nuttall's signatures. The general habit of his signature is always to appear to have been rapidly written. It is characterised by ease and freedom. But the signatures to the codicils appear to have been drawn rather than written. The final "e" in "George" has a peculiarity. Mr. Nuttall always carries the upstroke of the "g" up to the top of the "e." In the signature to Codicil No. 2, the direction has been changed in the middle—a thing Mr. Nuttall never did. There are marks of patching and painting in the capital "G" in the signature to the first codicil. In the signature to the second codicil, the first "t" has been touched after the "tt" has been crossed. The piece stuck on is not in the same direction with the rest of the downstroke.

(The witness was cross-examined at considerable length, but the cross-examination would scarcely be intelligible without the writings themselves to refer to, and it did not alter or shake Mr. Chabot's evidence in any material particular. At the close of the cross-examination,)

The LORD CHIEF JUSTICE said, I am going to make you my own witness, and I shall ask you a question, to which I shall expect your candid and careful answer. Take the signature, "Job Gregory," to the first codicil, and compare with it this piece of paper on which I have made Job Gregory write his name several times, and say what is the result of your comparison. While Mr. Chabot was examining the signatures, as desired by his Lordship, the Counsel for the defendants put in a quantity of documents, proved or admitted to be in the handwriting of Mr. Nuttall, or of Else, and read portions of the examination of Mr. Adam and Job Knowles on the second trial, and passages out of the affidavits of Job Knowles, Mr. Adam, and Mr. Newbold; and Job Knowles was re-called and asked if, on the second trial, he had not said that the will Mr. Nuttall gave him to keep was given him in the summer of 1855, shortly before the date of the first codicil, instead of in 1854, a year and a half before the testator's death, as he had said on the present trial; and also, whether he had not on the second trial assigned as Mr. Nuttall's reason for asking to have it

returned, that he wished to make an alteration in it,—not that he was well again as he had said on the present trial. Job Knowles admitted that he had said so.

Mr. Chabot having examined the signatures of Job Gregory, pointed out a number of remarkable differences between the signature to the codicil and the undoubted signatures, which were curiously enough all exceedingly alike one another, and also like his undoubted signature to his examination in Chancery. Mr. Chabot said that, in his belief, Gregory's signature had been forged, and Buxton's also, and gave similar reasons with regard to Buxton's signature.

This closed the defendants' case; and in answer to Sarah White's evidence, Mr. KARSLAKE called Edward Brown, who said,—I am a Surgeon at Matlock. I remember Saturday and Sunday, the 12th and 13th April, 1856. Richards was at my house on the Saturday, and on Sunday the 13th he dined at Mrs. Hodgkinson's, at Matlock Bath. I spent two hours of the afternoon with him, and went with him on his return home in Hardy's fly. I saw him on the Monday, and every day up to the following Sunday, the 20th. Whenever I saw him that week he was in bed. He was in very bad health. On Sunday, the 20th, I was called in to attend Mrs. Ingle. She lived near Matlock Bridge. In going to and from her house, I had to pass Alfred Richards's. I called on him that day in returning. It was about one o'clock. I found him in bed. His hands were muffled up with a rheumatic attack. I was with him half an hour. He was not able to leave his bed. I made no entries of my visits to him in my books. I visited him as a friend.

This closed the evidence on both sides.

Mr. Serjeant BALLANTINE summed up on behalf of the defendants, the trustees for John Nuttall's children, who stand upon the will and contest the codicils. The learned serjeant at the outset said he thought there could be no doubt on the mind of any man who had watched the trial that the case had been tried as became a case of such magnitude, and that all human means had been exhausted in order to elicit and arrive at the truth. In reviewing the whole case he invited the jury to place themselves in imagination in the position of the parties engaged in the transactions in question, and, above all, in the position of the testator himself. The testator was, he observed, a man of kindly disposition, and what could have been more cruel than to leave a will devising large estates to his cousin, thereby of course leading him and his family to embark in a different mode of living, and then to plant codicils all about his house, to be discovered by chance, perhaps years afterwards, and then to plunge them in disaster and distress? What could be more inhuman; what more unnatural; what more unlike the character of the testator? Then let the jury look at the position and conduct of Else in weighing the probability of his having been guilty of forgery and perjury. Let them look at one point alone—his conduct in the course of these repeated trials—in so carefully abstaining from calling Catherine Marsden, the testator's housekeeper, as a witness. Why, she was one of the most striking and most strongly marked figures in this remarkable drama. These protracted trials had taken place, and Catherine Marsden had never been called. She had been mistress of the house from the time of the testator's death to the

funeral, and from that time until a year afterwards, Else went to live at the house. She best must know who had gone upstairs between the death and funeral, who had had access to the loft or lumber-room, and she had been deliberately kept back. Else himself—a calm, cool man—had been called; but she, who perhaps might not have been so calm and cool, was not called. She might have let out something; she was a dangerous witness to call if Else's case was dishonest, but the very first witness he would have called if his case was honest. Why had he not called her? Again, why had he not called Mrs. Else as to some of the important points in the case—for instance, as to whether Richards really dined with Else on the particular Sunday before the first codicil was found? She, again, would have been a dangerous witness to call if there had been forgery. She might have been asked awkward questions in cross-examination, and she had not been called. Again, why had not Else ventured to submit these suspected and disputed documents to "experts?" Or, if he had done so, why had he not ventured to call them as witnesses? Then, coming to the character and contents of the documents, he observed that the case for the codicils was that the testator wrote two different hands—a formal hand and a running hand. Assuming, however, that this was made out, how had it happened that he had written the wills in the flowing hand, and the codicils—all three of them—in the other? As to the spelling, there was all the difference in the world between a mere general habit of mis-spelling common to both the testator and to Else, and the habit of mis-spelling particular words, peculiar to each of them. And he dwelt strongly on the mis-spelling of such words as "daughter," "heirs," and "codicils," all of which were grossly mis-spelt in the codicils, and never mis-spelt by the testator. Coming now to the history of what he called this remarkable romance, the learned serjeant fixed the attention of the jury on the week which intervened between the death and the funeral. Only one person could know whether Else got into the bedroom—a fact which would throw a great light on the history of this series of forgeries and frauds. It was during that week that the interlineation in the duplicate will was effected, giving Else and Marsden annuities. During the life of poor John Nuttall, the residuary devisee, it was not deemed prudent to do anything more. They did not dare, during his life, to tamper with his rights to the real property devised to him. The first attempt at fraud was modest and prudent, and it was managed so as to avoid any repugnant impossibility. That was the first step, and all the rest turned upon it, for that interlineation was referred to in the first codicil. Else had every opportunity to make the interlineation. If it was genuine, why was not that duplicate found at first as the other had been? The testator did not hide his will as he was supposed to have hidden his codicils. One duplicate was found in the cupboard. It was said that the other was found there too. If so, why was it not found there at first? It was not probable that both would be in the same place. The very object of duplicates was to have one in the testator's own custody and the other in that of some other person. No doubt Knowles knew more about it. He acknowledged that he had once had a will from the testator to keep, and the real truth was that he had never returned it, and had it in his hands at the time of the testator's death, and so he and Else had the opportunity of concocting

the interlineation, and then putting it up in the envelope endorsed "This is my rigt will." Now, if the testator had both wills in his custody, he would have made the interlineation in both, and not have taken the ridiculous course of making the alteration only in one duplicate, and then endorsing it "My rigt will." This, the learned serjeant suggested, was the key to the whole case. As to the first codicil, he suggested that the true theory was that the two labourers had signed a real codicil, which had been suppressed, and another with their signatures imitated had been imposed upon them, and hastily acknowledged by them ; and that thus they had been entrapped into contradiction and confusion, the result rather of the criminality of others than their own. As to Knowles's observation at the time, that there was "something more," that related to the duplicate of the will he had retained, not to any codicils he had attested, and his story of attestations was untrue. The learned serjeant dwelt strongly on the evidence of Walton as to the testator's statement, a month before his death, that there would "be a Nuttall for his successor." He likewise laid stress on the bringing forward of the third codicil a week or two after Knowles's dispute with John Nuttall's executors about the rent of the quarry. The effect of that codicil was to take the rent of the quarry entirely out of their hands and vest it in Else. This indicated the interest which Knowles had in the third codicil, which displaced John Nuttall altogether as residuary devisee. These were the principal topics urged by the learned serjeant, who did not conclude until it was so late that

THE LORD CHIEF JUSTICE said it would be unfair to call on Mr. Karslake to reply at so late an hour ; indeed he probably could scarcely conclude to-day, and in a case of such weight and magnitude he should not like to sum up without a careful consideration of the whole of the evidence and the documents, and especially as to the effect of the various devises and dispositions of the property, and for that purpose he should take the papers home and maturely consider them all before he summed up.

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## SEVENTH DAY, MONDAY FEBRUARY 29th.

This morning by desire of the LORD CHIEF JUSTICE, a tabular statement was presented of the annual value of the various properties dealt with by the wills and codicils.

The material portions of this evidence appear in the LORD CHIEF JUSTICE's summing up.

The settling of this statement took up some little time, and it was about Eleven o'clock when

Mr. KARSLAKE rose and addressed the jury for the remainder of the day, in reply on the whole case on behalf of the plaintiffs, who, he observed, although no doubt Else was the principal plaintiff, included several other persons who claimed under the codicils. He said that the case on the other side necessarily involved this—that all three codicils were forged, and that Else, at all events, if no one else, had been guilty of forgery and perjury. It would not do for the other side to say that it was simply a question whether the codicils were proved or not, for proved they had been over and over again in the Probate Court and in Chancery, and the case on the other side was neither more nor less than forgery. Nay, that case necessarily involved not only perjury on the part of Else, but conspiracy

on the part of several other persons to commit an atrocious fraud by means of forgery and perjury. If these codicils were not genuine, then Adams and Knowles (to say nothing of the two labourers, Gregory and Buxton), and not only they, but Newbold, the attorney, and Cresswell, the executor, must have been guilty of an atrocious conspiracy to commit forgery and support it by perjury.

Mr. Sergeant HAYES said that he had most particularly disclaimed any such charge, against either Mr. Newbold or Mr. Cresswell.

Mr. KARSLAKE.—But at all events, as regarded Adams and Knowles, it was not attempted to be denied that the case on the other side involved that they had been guilty of perjury and conspiracy to support forgery and fraud; yet, there was not the least foundation for this in the evidence in the case. And when his learned friend had professed, no doubt sincerely, great sympathy for the children of John Nuttall, supposed to be disinherited, that was equally unfounded, for they were not disinherited, and retained considerable property. He was quite sure that the jury, who had given the case their deepest and most dispassionate attention, would determine it entirely upon the evidence which had now been taken before them, and that they would not all be influenced by the decision of any former jury on the case. As regarded the handwriting of the will and the difference between it and that of the codicils, let them remember that the will was copied from a draught by the attorney, and so in an easy, flowing, running hand. Let them observe, again, that so far as appeared, the testator, who had himself fairly copied out his will and filled in the blanks left in the draught, had never disclosed the nature of his testamentary dispositions. As regarded the first codicil, the case of his learned friend seemed to be that between the date of the will (September, 1854) and the time of his death the testator had executed a codicil, probably in May, 1855, though the date of the first codicil now in dispute was October, 1855. No doubt it might be taken, then, as a fact that some codicil had been executed after the will and in the year 1855. A few days before the death of the testator he had a conversation with his attorney, from which the latter said he conjectured that he meant to alter his testamentary disposition, and he actually attended for the purpose, but unhappily the testator was then too weak even to speak or to disclose the secret of the lock which secured his deeds and wills. Immediately after his death his cupboard was forced by a relative of his, a Mr. Melland, and the papers searched, for a will. Yet, according to the evidence, it was a long time before the will was found, and then it was found in a book. It was obvious that he had desired to conceal it and prevent any one from seeing it; and if the will was found in a tithe-book, what improbability was there in a codicil being found in a highway-book? Knowles, it should be borne in mind, had always said there was "something more," and on a further search, the other duplicate of the will was found after the funeral. The executor, Mr. Marriott, had the keys after the death. The staple of the lock of the cupboard, which had been forced, was replaced, and the room door locked, and the key kept by Mr. Marriott until the funeral, when that duplicate—the one interlined, with the additional legacy to Else—was found. The case on the other side was that this interlineation was forged; and it was suggested that Else had got to the cupboard

between the death and the funeral. But then there was a contradictory suggestion—that the interlined duplicate was not in the cupboard. It was suggested that Knowles had retained the duplicate in his possession from the time the testator gave it to him until the time of the funeral. The two theories were contradictory, and what evidence was there to support the theory that the interlined will was not in the cupboard? The opposite theory implicated Knowles in conspiracy, forgery, and perjury, for he had sworn to the contrary; and his evidence, indeed, was confirmed by that of the executors, Marriott and Cresswell, to say nothing of that of Newbold, the attorney. On the day after the death it was true that the deeds, &c., had been removed to Newbold's. On the night of the funeral the interlined duplicate was discovered. On the day after the funeral vouchers, &c., were put into the desk, and afterwards taken by John Nuttall to the house of Else, where he was on a visit. The interlined duplicate was found in an envelope, endorsed, "This is my right will" (*sic*), and it was suggested that this was forged, for that the testator would not fall into such a gross error of spelling. But the letters of Else showed that he could spell the word "right," and therefore it was no more likely that he had written this endorsement than that the testator should have done so. It was, indeed, admitted that Else could spell correctly when he took pains to do so; and, on the other hand, the testator spelt wrongly when he did not take pains. Again, assuming the duplicate will to be genuine, it was certainly not put where it could be found, for it was not found in spite of repeated searches, and at last was found, not by Else alone, but by others, and found "gummed" up in an envelope. If the interlineation was by the testator, it would have been probably before execution, and then, naturally enough, he endorsed it, "This is my right will." All those on the spot—the executors and friends of the deceased—who best knew his handwriting, accepted the interlineations as genuine, and the duplicate will containing it was proved in the Probate Court. Then, as to the finding of the first codicil, which it was said was found only a few days after the death of John Nuttall, the residuary devisee under the will. Well, there was nothing in that, for the first codicil did him no substantial injury. It was suggested that if the codicil had really been among the papers he would have found them; but there was no evidence that he had ever searched the papers. The first codicil did not substantially alter his position; it took from him only two or three fields, in place of which he, as residuary devisee, took a small property as "lapsed." Then as to the finding of the codicil, it was in consequence of inquiries after a voucher which led Else to search the papers left in his house by John Nuttall, who had then died. There was an envelope then found containing the codicil, and what was there more improbable than in finding the will in a tithe-book? And it was found in an envelope which, beyond all doubt, had been in the testator's possession, and also along with the "epitome" or abstract of the will, of which all but a few words was admitted to be genuine. It was indeed said that it showed the interlineation to be forged, because it did not notice it. But that assumed that the epitome was accurate; on the contrary, it was not so.

The LORD CHIEF JUSTICE asked the learned counsel to point out in what other respect it was not so.

Mr. KARSLAKE said he would do so, as he deemed it most material. Property in the will was devised to William Knowles, charged with 81*l.* In the epitome the devise was noticed and the charge omitted. Then as to Bonsall—part of the estate given to Miss Sheldon—by the interlineation it was charged with the two annuities to Catherine Marsden and Else. No doubt that was omitted in the epitome, but so was the charge on the other estate. And the epitome in reciting the charges on Bonsall omitted two of the charges upon it. And so there was an omission—the abstract of the qualification of the devise of the quarry to Job Knowles for life “subject to the lease.” The omission, therefore, of all mention of the interlineation in the duplicate will was no great argument after all. Now, the epitome was found where it might naturally be expected to be—with the first codicil; and there was nothing inconsistent between the epitome and the interlineation. This first codicil it was which had been attested by Buxton and Gregory. Now, in dealing with their evidence he avowed that he felt great difficulty; for he had not at first understood the theory of the other side—that they had really attested a codicil in May, 1855, which had been suppressed, and for which another, with their attestations forged to it, had been substituted, and which they had been led, either by mistake or by bribery, to acknowledge. If they had ever attested anything, no doubt it was a codicil. And it was suggested that this was in May, 1855, in order to provide for the “lapsed” legacy of Sarah Holmes, who died in February. A codicil to be valid must be executed in the presence of two witnesses, like a will. If these two witnesses had attested anything together, therefore, no doubt it was a codicil. Was it this codicil now set up, or another which had been suppressed? Now, as to this, the moment they saw this codicil they at once acknowledged their attestation, and their subsequent depositions departing from it must be disregarded. His case was that they had at first told the truth, and that since then they had been induced to depart from it, and tell falsehood. Their very attempt to defeat the codicil was the strongest evidence in support of it. They had acknowledged the codicil in May, and upon their own story they never received money from Else until the “first rent-day (after the testator’s death)—that is, the rent-day in July, 1856. It was not until after this that they swerved from their first story—a story which had not been disputed or discredited at the time it was made. According to Else’s evidence, in the summer of 1856 Gregory told him a gentleman asked him “if 100*l.* would be of any use to him,” that “he was a stout gentleman,” and nothing further was said. And after this Else quarrelled with them and discharged them from his service—the men whom it was supposed he had suborned to commit fraud and perjury! Why, what a madman he must have been. That was in March, 1857. That was the occasion on which both men were present, and, according to Else, asked him for money, and when it was refused, threatened to be “off to Bonsall,” where Miss Sheldon resided, to whom the Bonsall estate was left. The men had never been in his service since, and were now hostile to him. Would he have dared to dismiss them and treat them thus if he had been persuading them to be parties to a fraud? Then in Chancery these witnesses declined to make affidavits in support of the codicil, and so they were examined orally on oath.

Mr. Serjeant HAYES.—That was the first opportunity we had of cross-examining them on oath.

Mr. KARSLAKE.—Not the first opportunity the parties who impugned the codicils had had of asking them questions. Nevertheless, the witnesses then swore that they had attested the disputed codicil. Then it was (in 1859) that in cross-examination they made the statement as to Else having offered them money “to keep the secret and carry it to their graves.” But they varied in their evidence even on that occasion, and one of them (Gregory) did not recollect the “secret.” And his evidence on this occasion had not supported his former statements, for he “could not recollect.”

The learned counsel—who had now been speaking two hours—then, at great length and with the utmost acuteness and minuteness, dissected and contrasted all the depositions of the two witnesses, and their evidence on all the three trials. He apologised for so doing, because, he said, he deemed it to be of “vital importance” to go thoroughly into this question as bearing on the genuineness of the first codicil. It is impossible to follow him in this searching analysis of their evidence : it is enough to say that it abundantly bore out our description of it, that it was “confused and contradictory.” The conclusion he drew was that the witnesses had in fact attested the codicil, and that they had afterwards been induced to swerve from their story. He then came to the finding of the second codicil in the highway account-book at Newbold’s office, as to which he contended that there was nothing at all improbable in it, nor anything inconsistent in the account given by Else about it. The only inconsistency suggested was, that on one trial he had said he had assisted at the search, and at the present trial had said that he did not assist at it, nor take up or touch the account-book. Well, but what was the theory which must be set up by the other side ? That Else had gone to the office with the forged codicil, got hold of the book, cut a slit in one of the leaves, and slipped the codicil into it, for it was admitted that the book was found there.

Mr. Serjeant HAYES said he had not admitted it, nor did he admit it.

Mr. KARSLAKE.—Then the theory is that Else brought the book there, and slipped it in among those which were emptied out upon the floor. Well, but this theory involved that Else had forged the codicil and put it in the book, and then took the book there. This, of course, involved that the codicil was forged. But the two attesting witnesses, Adams and Knowles, recognised it at once when shown to them, and swore to their attestations. So of the third and last codicil, dated the 12th of January. Now, there was evidence of four witnesses as to these codicils, or, at all events, as to the last. There was the evidence of the two attesting witnesses, Adams and Knowles, confirmed by that of Knowles’s children, as to the testator having called for him. It was true that the servant, Hannah Brown, swore that on no occasion at that time did Knowles come in the evening to the testator’s house. But her evidence was quite opposed to that of Knowles’s children, who remembered his going to the testator’s in the evening in the Christmas holidays of 1855-6, in consequence of the testator twice coming for him. Now, as to the place where the third codicil was found, the hole in the wall in the loft or lumber-room, it was clear that the room had been used by the testator for tools, &c. Fourteen

years ago money was found on one of the shelves there. There was evidence that the cavity in the wall had been made since the room was built, and yet not within a recent time. Could there be a doubt that it was made by the testator? And what was the motive of the extraordinary secrecy observed by him about it? The case on the other side must be that Else had made the hole and put the codicil into it. But then all the circumstances of the finding of all the codicils were placed at the time before all the parties interested, and especially before Newbold, the attorney, and before Knowles and Adams, the two attesting witnesses. If it was deemed to be singular that the testator should have put it into such a place, was it not equally strange to suppose that Else should have chosen such a place? How far was it likely that Else should have forged these codicils? It had not appeared that he had ever drawn a testamentary instrument, although it had appeared that he had copied wills drawn by the testator. The codicils were most astutely and ably framed, and could not have been drawn by one who never drew a will. The probability of forgery of the codicils a good deal depended on the contents of the will. Now, certainly, a more extraordinary will had never been made, nor one more likely to be altered. It would be deemed probable that the ancestral or inherited estate at Ashover should have been left to his namesake and cousin, John Nuttall; yet it was left to a person who was no relative at all—a stranger. The codicil left it to John Nuttall, and, surely, was far more rational and probable than the will. And what became of the testator's alleged expression, a few weeks before his death, that there would be a "Nuttall for his successor?" Not so by the will. In no sense would he have "a Nuttall for his successor," for he gave his house to Catherine Marsden, at least for life, and his inherited or ancestral estate to a stranger. Again, the will gave estates to the value of 500*l.* or 600*l.* a-year to another stranger, Eliza Sheldon, a late servant of his deceased mother." What more irrational, and what more likely to be disturbed by a subsequent codicil or some alteration of the will? And accordingly it was so far altered by the interlineation in the will that these estates were charged with the annuities to Catherine Marsden and to Else; and it was further entirely altered and revoked by the codicils, the estates being given to Else. The codicils had been framed with very considerable legal knowledge and skill, and there was no evidence that the testator, any more than Else, had ever drawn a codicil. The former of the codicils further involved a perfect familiarity with the contents of the will, and an accurate knowledge of its effect and of the nature and description of every part of the property; and if these codicils were forged they were the most extraordinary forgeries ever perpetrated. The properties were all accurately and exactly described. What more likely than that Else should be the inheritor of some of this large property, which the testator really did not know what to do with? The first codicil gave only three fields to Else, and the "lapsed legacy" of Sarah Holmes to young Newbold. What more natural? So of the second codicil, which gave a part of the property previously devised to John Nuttall to Else, but charged Else's property with annuities previously charged on the residuary real estate; and it took away the remainder in fee in the testator's house, previously belonging to that residuary real estate, and which house was devised by the will to Catherine Marsden for life. That remainder in

fee was taken away from John Nuttall, but then his residue was relieved from the charge of an annuity. The third codicil, no doubt, effected a material but a most natural alteration in the disposition of the real estate. It took away from Miss Sheldon one of the estates previously devised to her, and gave it to Else; but then it gave to John Nuttall the ancestral estate at Ashover. No doubt it made Else residuary devisee, but there was nothing improbable in that. Now, as to the handwriting of the interlineation and the codicils, that of the interlineation was naturally more close than that of the body, because it was an interlineation; and the codicils were a closer writing because they were not copied, whereas the will was copied, and the same circumstance would account for there being few mis-spellings the will as compared with the codicils, although there were some bad ones, as "debth" for "depth," "surgion" for "surgeon." In the codicils there were, no doubt, some instances—"hears" for "heirs," "codicels" for "codicils." But it was admitted that Else could spell well.

The **LORD CHIEF JUSTICE** said he had taken home a great many papers—indeed, a bundle—and had not found one rightly spelt.

**Mr. KARSLAKE** instanced two, and read one, in which there appeared to be no error.

Mr. Serjeant HAYES said in the other there were three errors.

Mr. KARSLAKE said that was enough for him. It showed that Else could spell well, and was it probable that if he had forged these documents he would not have taken care to avoid such errors? It was impossible for a moment to conceive, indeed, that Else could have framed these codicils without assistance; and that assistance must have been legal assistance. He must have had skilful coadjutors in the forgeries, if forgeries they were; and would they not have taken immense pains to avoid such gross and obvious mis-spellings; whereas it was manifest that the testator made casual slips in spelling through inadvertance. This was the character of the mis-spellings in the codicils—"tith" for "tithe," "commuation" for "commutation." No doubt the "t" was omitted by accident, for in the same codicil the word commutation was spelt correctly, and in the second there was "tithe" perfectly right.

Mr. Serjeant HAYES said it was the third time "tith commuation."

**Mr. KARSLAKE.**—These errors were merely accidental, for the same words were spelt correctly elsewhere, and if Else had forged these documents he would have taken care to avoid such errors. Then as to the word "daughter," spelt with an "o" in the codicil; it was not worse than "pauper" spelt with an "o" by the testator. And who knew more about the testator's habit of writing or mode of spelling than his executors, who had concurred in proving these codicils? It was most dangerous to endeavour to get rid of positive and direct evidence of witnesses by mere circumstances of this sort. There was the positive evidence of Mr. Adams, the medical man, who had twice been examined and cross-examined (although unhappily, now dead), and nothing to his discredit could be elicited. Supposing this to be a case of forgery, he must have been implicated in it. Yet, although there had been insinuations, there had been no distinct imputation to this effect; and he was quite disinterested in the matter, taking nothing under either will or codicils. But it was involved in the case on the other side that he was a conspirator and a party to fraud and perjury.

Unless he was guilty of perjury and conspiracy the two later codicils must be genuine, for he swore positively that he saw them executed, and that he and Knowles attested them. If he was swearing truly, Knowles was there; and if Hannah Brown was swearing truly that Knowles was not there, then Adams, Knowles, and Knowles's children were all forsworn. If the codicils were forged then it was not denied—it was, indeed, suggested—that Knowles was guilty of complicity in the fraud. It was suggested that he had desired to get rid of the rent of the quarry. But was that sufficient interest to induce him to be guilty of such crime? Hannah Brown, indeed, swore that for the last eight months of the testator's life Knowles had never been there of an evening. But that was not probable, and hardly credible, near neighbours as they were. It was supposed that these persons, Knowles and Adams, were accomplices in the fraud; but it was difficult to conceive that if there were such a fraud other parties on the spot, including the executors, should not have suspected it. Else was not alone interested in these codicils; yet Else had not been asked, "Did you not forge these codicils? Did you not forge the signatures of two out of the four attesting witnesses?" His learned friend had said that the question was not whether these codicils were forged, but whether they were satisfactorily proved. Still, the substantial question was whether they were forged, for, if not genuine, they were forged. His learned friend said, indeed, he was no accuser. True, he was not in one sense—that there was no criminal prosecution instituted against Else; but not the less was he implicated in this accusation. Yet what had been his former career in life and what had been his character? He had obtained the testator's confidence, and there was no proof that he had done anything to discredit it. It appeared, on the contrary, that he was respected in this neighbourhood, where he had lived all his life and was supposed to have perpetrated these repeated forgeries, and still held various local offices. Yet it was supposed that he had perpetrated this series of forgeries under the very eye of the testator's attorney and executors, obtaining the assistance of two men like Knowles and Adams. The theory of the other side was that a genuine codicil had been suppressed and three false codicils forged and fabricated. But if a codicil made in May had been suppressed, why had not the forged codicil substituted for it been dated at the same time? And still more, if there was a codicil forged in substitution for a former codicil, really attested by Buxton and Gregory, how had it happened that the forger had not better imitated their names? Of course, that the codicils were not in the same character of handwriting as that of the will it was apparent upon inspection. But then it was equally obvious that the testator wrote two different hands, and this could be abundantly shown to the jury by documents and books produced to them; and the witnesses against the codicils had formed their opinion mainly upon the "running" hand. As to Mr. Chabot, the "expert," he was a professional witness, and gave his evidence with a bias. The learned counsel then, with some stringency, analysed the evidence of that gentleman. Coming to the cardinal point of the case as to which that witness had been so closely examined on Saturday—as to whether Gregory and Buxton had ever really signed the first of the disputed codicils at all—the learned counsel felt that he was in a great difficulty, because the matter had been opened by the Lord Chief

Justice. The witness had been asked to make a comparison of the signatures to the codicil with some undisputed signatures of those two witnesses, and he had upon that comparison declared that he believed the signatures of their names to the codicil were forged. But the signatures to the codicil were in 1856. These examinations were in 1859, and they wrote their names for comparison the other day, and they themselves had not disavowed their signatures, but had suggested that they had been bribed to make the signatures. The two theories were inconsistent, and virtually destructive of each other. What theory was eventually to be set up as regarded these men? The theory of forgery had greater difficulties than that of truth? On the showing of the men themselves they had signed some codicil, and the forger, having their names to it before him, could hardly have written signatures utterly unlike theirs. Of this, however, the jury would judge upon comparison. Was it reasonable, on mere belief of a professional witness and mere circumstances of suspicion, to discard all the direct testimony in the case? Let the jury look at the conduct of all the parties in the case, especially of the executors. Was not that amply enough to outweigh all these circumstances of suspicion? And were the jury on mere circumstantial evidence to charge upon several respectable persons the guilt of conspiracy, forgery, and subornation of perjury? As to the shred of evidence adduced (to contradict Mr. Adams) from one of the testator's letters in February, a fortnight or so before his death, that he had no medical attendant, it meant no more than that he had not one at that time or on that day. Improbabilities had been relied upon, but there was an old saying "that truth is sometimes stranger than fiction." And so it might be here. Was it suggested that Mr. Adams, who was poor, had been bribed? It was true that he was poor, but that raised no probability that he was bribed to commit perjury. He had given his evidence at the close of a long life, he had since died, at the age of threescore years and ten, and had gone down to the grave adhering to the truth of his story. Was it a light thing that a man like this, who had left an humble but honest memory behind him, was to be blasted in his grave on mere suspicion? There might be no "storied monument" to record his virtues; but he had lived a long life without reproach. Why was his memory to be dishonoured upon mere suspicion and surmise? Unless the jury could conscientiously say that Mr. Else, in conspiracy with Mr. Adams and Mr. Knowles, had forged these codicils, they must, he submitted, find a verdict for the plaintiff.

The learned counsel, who had spoken nearly six hours, and made a most acute and exhaustive address, in which he touched most ably on every point in the case, having concluded his address,

The LORD CHIEF JUSTICE said it was impossible at that late hour to sum up such a case, and he must postpone his summing up until the morrow.

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## EIGHTH DAY, TUESDAY, MARCH 1st.

This morning, at the sitting of the Court, at 10 o'clock, The LORD CHIEF JUSTICE proceeded to sum up the case to the jury:— Gentlemen, he said, there is one observation which has been made by the learned counsel on both sides, in which I quite concur—viz., as to the vast

importance of this case, not only in regard to the rights of property at stake, but, still more, in regard to the grave questions of character and conduct which are involved. For I entirely agree with the observation made by the learned counsel for the plaintiffs in the course of his able and admirable address—that it is impossible to shrink from treating the case as one which involves a charge of conspiracy to commit fraud, forgery, and perjury—offences of the most heinous character. The case, therefore, is one which has received, and will I am certain continue to the last to receive, your most anxious attention. You have to determine the question whether all or any of these codicils are genuine, as those who set them up are certainly bound to satisfy you; and it is said that if you have any doubt on the subject you are bound to give the defendants the benefit of that doubt, and that certainly is true; but I trust that you will not take refuge in a doubt, having all the materials for a judgment—but that you will honestly and resolutely address yourselves to the issue, whether or not these are genuine instruments, or whether they are spurious, forged, and fabricated. Now, as to the first of the codicils, we have the attesting witnesses, if not denying their writing, at all events denying that they saw the testator sign, which would be necessary to the validity of the instrument. It must not be lost sight of that they have on former occasions asserted that they did see him sign, and whether you believe their former or their present statement it will be for you to say. That they were called in by the testator to see him sign some codicil is one of the facts in the case as to which no one has expressed the slightest doubt; and as the testator must have known what was necessary to the validity of a codicil, the probability is that they did see him sign. That, however, is a very subordinate question in the case. And, coming to the main question, which is the genuineness of these instruments, I find a marked distinction between the first codicil and the others. As regards the first, we have of the two witnesses, at all events one of them now questioning the genuineness of the signature which purports to be his, and the other—though not denying his signature—declaring that he did not see the testator sign. The one who denies that he signed the document at all gives two reasons; one, that he believes the document he signed was earlier in the year than October; and the other, that the paper he signed was much less covered with writing than the disputed codicil; and that may turn out to be material. There is, however, this distinction between the first codicil and the other, that the witnesses to the first doubt or deny their attestations, whereas the two witnesses to the other two codicils (Knowles and Adams) swear to their attestations. It will be for you to say whether you believe the first codicil was attested. The attestations to the other two are not in dispute. As to the denial of the attestations to the first, probably you would not place any reliance upon those denials unless corroborated by the other facts in the case. If the two later codicils are genuine, you will probably not believe that the first is not so merely because these witnesses, who have placed themselves in so discreditable a position, have denied it. But if the first is forged, then the second and third, which refer to it and are parts of the same testamentary disposition, will fall with it. If, on the other hand, you entertain no doubt that the second and third are genuine, then that conviction will reflect back upon the first codicil, and tend to show that it is

genuine. Now, as to the second and third codicils, the plaintiff starts certainly with a vast advantage. He proposes them on the testimony of the two attesting witnesses, who are both persons against whose previous character nothing can be said, and one of whom (Adams) did not derive any interest from any of the codicils, though the other (Knowles) certainly—at all events a member of his family—has an interest under one of them. Now, I need not tell you that the presumption is in favour of the codicils thus set up, and the plaintiff starts with that advantage; and no doubt the party who impeaches the instruments thus propounded has an uphill work to do. Nevertheless, that does not dispense with the necessity of a full inquiry into all the facts of the case. Start with the presumption that these are genuine instruments, but if the facts are such as to satisfy you that they are spurious, you must say so by your verdict. Otherwise the forger who could only find two associates against whom up to that time nothing could be said might go to work with perfect certainty of success. Gentlemen, the experience of life, alas! teaches us every day that men after years of apparent good conduct, yield to some temptation which suddenly arises. While, therefore, you give every credit to the witnesses at starting in this inquiry, you must not the less on that account make that inquiry careful and searching. No one can doubt for a moment that a cloud of suspicion rests upon the case. It may be that you may be able to dispel that cloud, and to see your way to a conclusion in favour of these codicils; but that the circumstances of the case demand the most anxious investigation no one can doubt. When you remember that the effect of these three codicils, supposed to have been made in rapid succession within a few months before the death of the testator, and found in the order of their dates, transfers the greater portion of the property which by the will only eighteen months previously, had been devised to other persons, and alters the disposition of it in favour of the finder, Else (who, at all events was the finder of two, and was present at the finding of the third), one of them, the last, being found, too, in a place which certainly seems the strangest possible place of deposit for a man's last testamentary disposition; and when to this you add the difficulties presented by the character of the writing, which, to my mind, are almost the greatest of the difficulties in this most difficult and complicated case, it will be impossible not to see that this is a case requiring your most anxious and cautious consideration; and it will be for you to say whether all the difficulties of the case are so disposed of as to lead you to the conclusion that these are genuine instruments. It is, as I have said, true that the case involves, on the part of the defendants, a charge against the plaintiff, and those who have been parties to these instruments, of a conspiracy to commit forgery and perjury. And no doubt the presumption must be in favour of innocence, more especially in the instance of persons previously of respectable character. But, on the other hand, suppose these persons were here on their trial for conspiracy, and that the evidence led you to the conclusion that they were guilty, what effect would their former characters have upon you? It might make you pause and hesitate before you came to the conclusion of their guilt; but if the evidence satisfied you of it, then the character they had previously been able to maintain would not prevent you from pronouncing it by your verdict. And so, if the evidence here leads you to the same

conclusion, then, however painful may be the discharge of your duty, you must not the more shrink from it than if these parties were arraigned before you criminally, instead of its being simply a question of civil rights. Gentlemen, I acknowledge that it strikes me that the strength of the defendants' case, and the weakness of the plaintiffs', arises on the face of the documents themselves; and if you can see your way clearly through those difficulties which the documents upon the face of them present, then, whatever the strangeness of the circumstances under which the codicils have been found or produced, yet those difficulties may be got over. It was truly said by Mr. Karslake in the course of his admirable address that "truth is stranger than fiction;" and although it may be marvellous that a man like the testator should have hidden his last testamentary disposition in a "hole in the wall," yet it is possible. So it may be strange, and yet it may be possible, that the codicils should have been found in the order of their dates, and should dispose of the real property, gradually and by degrees, in favour of Else. All these things may be got over if you can get over the difficulties presented by the documents themselves. And I should be disposed at once to call your attention to those difficulties, were it not that it may be more convenient to throw the history of these transactions into the form of a connected narrative. First, let us take a rapid view of the testator himself, whose character the evidence enables us very well to appreciate. Let us look for a moment at his character and capacity, his habits, and his social and domestic position. All agree that he was a man of singular intelligence. He had received, not indeed the education of a scholar, but a sound commercial education; and as far as can be judged from the extracts found among his papers, he seems to have taken pains to cultivate his mind and to increase his stock of information. All persons who had anything to do with him agree that he was a man of most business-like character and methodical habits; a man of great intelligence, and trusted and looked up to as such. He was not a man of genial or social disposition; he lived to himself and for himself; he did not entertain his friends; he was not "given to hospitality;" he was a man reserved and close. By application to business and by habits of thrift he had acquired considerable property in addition to that which he inherited, and at the time of his death he was possessed of landed property worth about 2,000*l.* a-year, and personality at least to the amount of 8,000*l.* Now, as to his domestic habits, he was not and never had been married. His nearest relatives were cousins, and of these the nearest on his father's side was Mr. John Nuttall, in whose favour to a great extent the first will was made. Now, I am desirous of calling your attention to that will before we go further. His real estate consisted of scattered properties in several places. First, he devised some land and three cottages in Matlock to Alice Knowles for her life, with remainder to her son, William Knowles. The house in which he lived, and some land adjoining, together with the house in which Else lived he gave to Catherine Marsden for life, with remainder to John Nuttall in fee. Then he left some tithe property, of the annual value of 340*l.*, to Else, subject to annuities which left him 140*l.* a-year; so that by the will Else would have 140*l.* a-year. Then he devised property at Ashover worth 200*l.* a-year to one Eliza Blackshaw, whom he described as "natural daughter of a female servant to his grandfather

Nuttall ;" and the suggestion has been made which carries conviction to the mind, that this person was his own daughter ; and, in default of "appointment" by Eliza Blackshaw, remainder to John Nuttall. He gave other property in Ashover to Maria Travis absolutely. Then he left a farm, &c., at Brockhurst, to Sarah Holmes absolutely ; and some real estate at Brampton to his cousin, Stephen Melland. He then devised three properties, worth 680*l.*, at Bonsall, Matlock, and in the township of Wensley and Snitterton to one Elizabeth Sheldon for life, with a power of appointment ; remainder in fee to John Nuttall, (his cousin, the residuary devisee), in default of "appointment" by her. So that John Nuttall had the remainders in fee of the properties devised to Catherine Marsden absolutely, and of the estates devised to Eliza Blackshaw and Elizabeth Sheldon, in default of appointment by them. The value of the other residuary estate, excluding the quarry, may be taken at 470*l.*, and adding 100*l.* (the rent of the quarry), it would be 570*l.*, which is independent of the royalty from the quarry—and which residuary estate was charged with life annuities to the amount of 340*l.* Now, as to the quarry, which was let to Job Knowles at a rent of 100*l.* a-year (exclusive of a royalty for stone raised), it was left to him for life, "subject to the subsisting lease." The personality was divided among various persons, and the furniture was left to Catherine Marsden, with 200*l.* a year. This was the effect of the first will, which made Cresswell, Marriott, and John Nuttall executors. I have omitted, you see, the interlineation which was found in one of the duplicates of the will, because it will be clear that when these wills were originally executed the interlineation was not there. The will was executed in duplicate on the same day, attested at the same time by the same witnesses, and no one can doubt that these were intended to be duplicate wills. Now, the presumption in point of law is that when an interlineation appears in a will, unless there is anything to satisfy us as to when it was made, the presumption of law is that it was after execution. And if that presumption arises in the case of a single will, how much more so in the case of a will executed in duplicate ! If the interlineation was the act of the testator at all the effect of it would have been to add 100*l.* a-year to the income of Else, and 50*l.* a-year to that of Catherine Marsden by way of annuity. Taking it for the present purpose to be genuine, the intention of the testator was to give Else 240*l.* a-year, and Catherine Marsden 250*l.* a-year. Now, such being the effect of the will, one of the devises, as I have stated, was to one Sarah Holmes. The will was executed in September, 1854, and in February, 1855, she died, so that her legacy "lapsed," and if no further provision were made it would fall into the residuary estate. A very short codicil would have been sufficient to provide for that, and one would think that it would probably be made within a reasonable time after her death. One thing is certain, that in the course of that year, 1855, whether earlier or later, he did unquestionably make a codicil. The two witnesses Gregory and Buxton, concur in that. In the course of the autumn of that year he became worse, and at the end of the year he was seriously ill. We have heard from Knowles (and it may be of some importance) that in the autumn the testator asked him to take care of a packet, telling him that it contained his will, and that he was to open it in case of his death. Knowles states that afterwards he asked for it back again, saying that "he was better." That

is one of his statements ; but another is that he asked for it to "make an alteration" in it. Again, at one trial Knowles said it was the summer before his death. Be that as it may, he was no doubt in a state of health in which, if his mind was not quite satisfied with the testamentary dispositions he had made, he would be likely to alter them. He seems to have suffered a great deal from an abscess in the spine, which would affect the whole movement of his body, although he is said to have been able to get about until within a fortnight or so of his death. But about that time before his death he became much worse ; he fell into a state of weakness, he soon sank into unconsciousness ; he lingered a few days in that state, until, upon Friday, the 7th of March, 1856, he died. On the Sunday before his death Mr. Newbold, who had been his attorney for many years, saw him, and conjectured that he wished to make some alteration in his will, and he was to attend on the next day to receive instructions. The testator, however, was summoned from this life to another, before he had any opportunity of carrying out his intentions. On the Monday his attorney called to see him, and it is manifest that at that time he had testamentary dispositions in his mind, and was desirous of doing something, though what it was cannot now be known. He pointed to the cupboard or cabinet in his bedroom in which he kept his will, with his deeds and papers. It was locked, however, with a lock so constructed that it could only be opened by disposing the wards in the order of the letters composing a certain word. He pointed to it and strove to articulate, but could not speak. He was assisted out of bed to it, but his strength failed him, and he could neither dispose the lock so as to form the word, nor utter the word that others might do it for him. He was carried to bed in a helpless state, where he soon sank into unconsciousness, and died. Now, several persons had been summoned to his bedside, among whom was a cousin—a Mr. Melland, who for some reason which has not transpired was desirous of at once, without any delay, seeing the will. What the reason was can only be surmised. It seems that something had been said to him,—what it was would not have been evidence, and was objected to ; for some reason or other, he insisted that the will should be at once opened. Accordingly the cupboard was forced open, and the will was found. Mr. Marriott, the executor, was sent for, as he was not far off (the others were at a distance.) It did not occur to any one that there was anything else. The executor fastened up the closet by hammering the lock together as well as he could, and he locked the room up and took away the key ; and, unless you suppose that the lock could still in some way be opened, the papers in the cupboard were thus safe under lock and key. Next day Mr. Marriott returned with Mr. Newbold, the attorney, and the deeds, &c., were put into a bag and taken to his office, and the cupboard was again fastened up, the room door locked, and the key taken away by the executor. No one of the party returned, so far as we know, until the day of the funeral, which took place in a week. On that day the parties returned again to the house, and there were then present Marriott and Cresswell, the executors ; Newbold, the attorney ; Job Knowles, and Else, the plaintiff. There was then another search, and another packet was found, indorsed, "This is my right will," which was found to contain the other duplicate of the will, with the interli-

neation, upon which, in my judgment, so much really turns in this case; for, though that question is not included in the issue which you have to try, yet, incidentally, it has a very important bearing on the case. If you are satisfied that it is genuine, then the codicils, the handwriting of which is the same, are probably also genuine; but if you are led to the conclusion that the handwriting of the interlineation is not genuine, it may throw great light upon the question whether the codicils are genuine. The effect of the interlineation was to give an annuity of 100*l.* a-year to Else, and an additional annuity of 50*l.* a-year to Catherine Marsden. There was nothing which would appear improbable in that; nothing which would be at all likely to awaken suspicion. It occurred to no one to question it, and it passed for the time as genuine, and the will was proved. So matters stood until in the next month—the month of April, 1856—we have the first codicil brought to light. Let us see under what circumstances it came to light. It seems that in addition to the title-deeds, &c., conveyed to Newbold's office on the day after the funeral, there were papers and books of various kinds, of which the books had been also taken to Newbold's, and the other papers and vouchers, &c., were taken by John Nuttall (who was one of the executors) to the house of Else, where he was on a visit. There the papers and vouchers remained. Very soon after John Nuttall went away, and in a short time he died. In April some one made a claim against the estate of the testator, and inquiries were made for vouchers. Marriott, the executor, applied to Else, who said he would set to work to find the receipt; and he found—not, indeed, the voucher, but an envelope gummed up, which he says he took to Mr. Newbold's. Now, Newbold may not have been sufficiently vigilant, nor sufficiently alive to suspicious circumstances. He may have been too credulous of representations he ought to have distrusted; but no question has been made of his honesty. He says that he opened the envelope, and that it was found to contain the first codicil—the first in order of date, and the first also in order of finding. And with it there was an epitome or abstract of the will, which I consider of most vital importance in the case. There would be nothing very marvellous in finding such documents among the testator's papers. But the question is whether this is the codicil which was found. Some codicil we have seen was no doubt executed by the testator; and it is not at all impossible that Else may have found it. But was this it? It is not improbable, again, that the testator would have placed with it an epitome of his will. It is most important, then, to consider the epitome, and see whether, so far as it is the undisputed production of the testator, we find it in any evidence of the disputed interlineation in the second duplicate of the will. Now, the epitome professes to embrace not only the provisions of the will, but of the first codicil; but the part which relates to the first codicil is disputed, as to its genuineness, and a question of grave doubt presents itself as to that part of the epitome. But there are parts of it which are indisputably genuine; and if we find any part of that which is thus indisputably genuine inconsistent with the interlineation or the codicil it may throw great light on the question how far the codicil is genuine. Let us look first at the effect of this first codicil. It revokes the devise to Elizabeth Sheldon, except as to the Bonsall estate, and goes on to give the property to Else absolutely,

worth about 550*l.* a year, subject to four annuities of 20*l.* each to Catherine Marsden's family. And I may observe that it is remarkable that all the provisions which have reference to Else are accompanied by provisions for the benefit of Catherine Marsden or her family. Well, there is further in this codicil a devise of an annuity of 50*l.* a year to Mr. Newbold, the attorney, described as James "Clifford" Newbold, out of this property, which would leave a present interest of 380*l.* a year to Else, and then it gives the residue—worth about 100*l.* a year—to Catherine Marsden for life, so as to raise her income, which by the will with the interlineation would be 250*l.* a year, to 350*l.* Then, giving her that for life, it gives the remainder in fee to Else. Thus he would have a present interest of 350*l.* a year, and eventually 650*l.* Then, the property which had been by the will devised to Sarah Holmes, and the bequest of which had lapsed by her death, was left to Mr. Newbold's son, Thomas. Thus, then, the attorney got an annuity for life, and his son an estate in fee. No one has suggested that either of them lent himself to forgery or fraud. But, on the other hand, it is not in human nature to be ready to pick holes in a devise for one's benefit. Such, then, is the codicil. And then with it is the epitome. Now here there is an extraordinary omission. It is silent as to the two annuities given by the interlineation to Else and Catherine Marsden. It is remarkable that these should have been omitted. It is urged, indeed, that the epitome was not in all other respects perfectly accurate, and that it may be that it was made before the will was finally executed. That is plausible, but it assumes what is improbable; for it is a matter of fact almost certain that the interlineation must have been added after the execution of the will. It would have been idle, in executing duplicates, to execute one with an interlineation, and one without it. Therefore, and as the epitome purports to give the effect of will and codicil at the time of the codicil, and the interlineation was after the will, the epitome ought to have mentioned it, assuming it to be genuine. But the difficulty does not stop there. There is one, to my mind, of a more serious character. Sarah Holmes had died, and it would be expected that the testator would have provided for the lapsed bequest. I think that he did so, for you will observe in the undisputed parts of the epitome her initials struck out by cancelling lines (and of course it must be taken that the cancellation was by the testator, for Else cannot set up that he had ever meddled with the document), and then there are two brackets (which, for the same reason, we must take to have been drawn by the testator), drawn so as to connect two small properties—one of which is that devised to Holmes.\* Now, what is the meaning of that cancellation and those brackets in the epitome as drawn by the testator? Some meaning they must have had. In the will those properties were not connected together. The brackets and the cancellation, then, point to some alteration subsequent to the will and prior to the disputed codicils. What, then, is the meaning of this alteration in the epitome? Does it not point to some testamentary disposition which has been suppressed? Its absence is most significant, and is calculated to make a deep impression on the mind. It is for you, however, to say what importance attaches to it. If you are satisfied that it points to some codicil which has been suppressed, then what becomes of the first of the disputed codicils, which is supposed to have been abstracted by the

\* See Appendix, No. 2a, page 79.

testator in this epitome, but which carries out a different disposition? As I have already noticed, the interlineation is also unnoticed by the epitome. Now, a few words as to the finding of this codicil. The object of a codicil is to correct a will, and so it is important that it should be placed where it is likely to be found. The will was executed in duplicate, and when that is done it is not usual to have both duplicates in the same place. According to Knowles's evidence the testator had on a former occasion given him the will to take care of. What had he done with it? One will was certainly in his cupboard, and if he had apprehended danger from keeping his will in his own custody he would be likely to give it to Knowles, or to Else, who had still greater intimacy with him, and was in fact his factotum, and with whom he might suppose he could deposit it with confidence. There is another remarkable circumstance—it strikes me as very remarkable—that a man of business like the testator should keep two duplicates in the same place; and, *a fortiori*, one of them, with an important interlineation which was not in the other one. It is said, indeed, that both were found in his cupboard after his death, the cupboard having been re-fastened after it was "forced." But, then, it is suggested that, if the other circumstances should lead you to the conclusion that the duplicate was tampered with, Else had the opportunity, either from the possession of the document, or by going to the place where it was deposited in order to make the addition. Else admits that he was at the house every day from the time of the death until the funeral. It would be natural that he should be, as Catherine Marsden, his sister-in-law, was there. But was he ever upstairs? He admits he was once. Was he in the bedroom? He denies it. But it is impossible not to feel that the man who had done what it is charged he did do would not hesitate to deny it when accused of it. And there was another person in the house who had a common interest with himself in maintaining the validity of these codicils, who might have proved whether he was in the bedroom between the time of the death and of the funeral; and there is not a circumstance in the case which appears to me more remarkable than the absence of Catherine Marsden. In every one of the codicils some provision is made in her favour; her income is more than doubled by them; she has the strongest interest in upholding them; and the question naturally arises, why is she not here? It would be strange, indeed, if she were not made aware by the testator of dispositions so much in her favour. He had made ample provision for her at first. He is supposed to have gone on doubling her income. It would be strange, indeed, that he should have done this without giving her any intimation of it. Why is she not here as a witness? An observation was thrown out as to her having taken to drinking and become boisterous. But it was said that she became so even in the testator's lifetime. And yet he is supposed to have gone on increasing her income, and at last doubling it! And this so shortly before his death! And again,—this is the third trial of the case, and on each occasion has her presence been challenged and her absence commented upon. Else must know where she is. He, as executor, has to pay her her annuity; she receives the rents of property; he must know where she is. Why is she not here? In her absence, and in the absence of any evidence to account for it, what is the natural inference? When you have two persons who are to tell the same story and give details

as to a variety of matters, it may be that one will bear an ordeal of cross-examination to which it may be dangerous to expose the other. This, I confess, has made a strong impression upon my mind; it is for you to consider to what weight it is entitled, and how far you are led to the conclusion that it is probable that Else made this interlineation in combination with Catherine Marsden, who was jointly benefited by it. There is no positive evidence that Else ever had access to the room. But the whole is for you to consider. Let us pass to the finding of the second codicil, or to the circumstances under which it was brought to light. Else had succeeded the testator as surveyor of highways, and there was said to be a book relating to "team work," which was supposed to be among the books taken to the attorneys', and he went to the office to have a look for it. The bags containing the books were fetched down. It may not be a circumstance of suspicion, but it is important with reference to recollection, that Newbold and his son do not agree as to who brought down the bags. One or the other of them did so, and among them was found this book. It is material to know who meddled with the books, and above all, who picked it up. But, unfortunately, here again the evidence of those who were present does not agree. At the first trial Mr. Newbold, the father, stated that he emptied the contents of the bag on the floor, and that Else picked it up. Young Newbold says that he picked it up, and so says Else. I observe, however, that at the second trial, an observation having been made that Else, if he picked it up, might have slipped something into it—at the second trial (I observe it with great regret)—Mr. Newbold varied his statement, and said that either his son or Else—"he is not sure which"—picked it up. And now the son says he is sure he picked it up; and that, of course, would afford no ground for the observation that Else had access to it in the act of picking it up. But even if Else was as near the books as Newbold originally stated, then it should seem that he had no opportunity of then inserting the codicil in the book, supposing it were really among those thrown out of the bags. If, on the other hand, the other evidence should satisfy you that the codicil is a forgery, then there was certainly the opportunity of inserting this book among the parcel of books on the floor, and taking care that it should be picked up, which he could easily contrive, as the description of the book was known. Now, it seems to me that (assuming that you are satisfied the codicil is a forgery) the more reasonable hypothesis is that this book was among the vouchers which had been left at Else's house, for you see it is scarcely to be called "a book;" it is rather a few leaves of paper made up into the form of a book, with a piece of brown paper for a cover. It is more probable that it was taken by John Nuttall to Else's house among the vouchers, than that it went to Newbold's with the "books," by which, no doubt, were meant the books properly so called—the regular account books, bound in the usual way. Then, if the "book" was at Else's house, he, of course, would have ample opportunity of inserting the codicil, and then could easily contrive that Newbold should in consequence of his inquiries ask him to the office to look among the books, and then drop it among them. I have already observed, and I repeat, that if you are satisfied that the documents are genuine, it is quite consistent with all the facts of the case that the book may have been found as alleged. And I believe that

your decision will turn upon the documents themselves, and that unless you are satisfied that they are forgeries, then, however strange the circumstances may be, it is not inconsistent with probability that they may have been found as represented, though there are circumstances in Else's account not easily explainable, and it is strange that if he went there to look for the book he should not himself have helped to look for it nor have looked at it when it was found. Such, however, is the account which he has given of the matter. Now, let us look to the effect of this second codicil. By the will the house of the testator and that of Else were given to Catherine Marsden for life, remainder to John Nuttall in fee. Now, the first provision of this codicil is to transfer that estate in remainder from Nuttall to Else. It is now for the first time that the codicils begin to deal with the residuary real estate, all of which was by the will given to Nuttall, and part of which is now given to Else. Then there is an annuity to a child of Job Knowles's. Now we come to the third codicil, the circumstances attending the finding of which were so extraordinary. There was a room in the testator's house to which it has been attempted to attach an air of mystery which would be worthy of a romance. Money, it was said, was found there, which, however, the testator was surprised at (though he pocketed it), and it can hardly be seriously pretended that he had secreted it. Certain evidence was given with a view to show that this was a kind of "secret chamber," but with what object I cannot conceive, for it came out that he said he took care to keep his money at the bank (and this has an important bearing on the supposed finding of money with the codicil), and his deeds and will were in the cupboard. You will probably think it far more likely that the 20 sovereigns said to be found with the codicil were put there as a blind, and put there by the person who put the codicil there. It is suggested skilfully by Mr. Karslake that it might have been put there and forgotten on a sudden. But the codicil is dated the 12th of January, and the testator did not die until March. Besides, the testator had executed two duplicate wills, and (as is set up by the plaintiffs) he had executed two other codicils, and all these, it is said, were found in or came from the cupboard. Why, then, should he have hidden this last codicil in such an extraordinary place? The idea, indeed, of secreting a last codicil there was calculated to excite all the inimitable and admirable wit of my brother Hayes. It is certainly not impossible that the testator put it there, but it is for you to say how far it is probable. The circumstances of the supposed finding are all worthy of your attention. There is evidence that the hole in the wall had been made many years ago, and was, indeed, almost as old as the building. Moreover, there was a heavy iron vice screwed down on the window board over the cavity (so, at all events, was the evidence), and this the testator would have had to unscrew and replace and screw down again. It is for you to say how far all this is probable or reasonable, and so lately before his death as January. Let us look now to the effect of this third and last codicil. It leaves an estate worth 200*l.* a-year to John Nuttall (charged with an annuity of 30*l.* a-year, however, to Catherine Marsden), by which his interest would be raised to 300*l.* a-year, and it then took from him all the residuary estates and gave it to Else, subject to some annuities to Catherine Marsden's sisters. Such was the last of the codicils. Before calling your attention to their combined

effect, let me direct your attention to the evidence as to the circumstances of their execution. As to this—*i.e.*, as to the last two codicils, Knowles is the principal witness, though he is confirmed by Adams, and, according to their evidence, these two codicils were executed in January, 1856, the first having been executed in October, 1855. You will observe how rapidly one followed the other. There is, however, a conflict of evidence between these witnesses as to the circumstances. One says he was waiting two hours for the other, whereas the other says he was there first. It is said, with truth, that as up to this time these persons had maintained a respectable character, it is not to be taken as likely that they would lend themselves to such a conspiracy. But there are observations to be made on their evidence. The will was a very strange one in some respects. There were three devises to servant-women, and the natural daughter of one of them. These were remarkable circumstances, and it seems strange that a different disposition of the property should be made without anything being said about it. Now, Adams swore that he had no idea that they were testamentary papers which he had been attesting. Whereas Knowles swears he talked to him about it, and as to what the alterations might be. But there is something still more remarkable, and that is, that neither of them, when the wills were found; said anything as to the codicils. Nay, even when the second codicil was found—the first of those they had attested—when surely it might have been expected that they would have said, “There is another,” they said not a word. And it is not until October, 1857, that the last codicil came to light. Nay, still stranger, Knowles, who had been active in the matter, and present when both the wills were found, merely said that there was something more. Why this half revelation? No one can doubt what his duty as an honest man was, the duty which he owed to the testator who had placed confidence in him, and relied on his doing his duty when he was dead and gone. No one can doubt that it was his duty to have disclosed the codicils, if, indeed, he knew them to be genuine. But he did not. He said he “feared to make mischief,” and that he “would not betray the testator.” Make mischief! betray the testator! what is the meaning of this? What mischief could be made by disclosing the fact that there was a codicil—unless, indeed, he knew or suspected that a codicil had been destroyed? Then, indeed, any disclosure on the subject might make mischief in the sense that it might prompt to inquiry and cause alarm. No one can doubt that he was strangely wanting in his duty as an honest man in not disclosing the fact of a codicil if he knew one to exist. “Betray the testator!” What does that mean? I know of nothing which could “betray him” more than the course which was pursued. He was one of those whom the testator had trusted, in the hope that he would do his duty; and it was his silence which betrayed the testator. Why these half revelations—unless, indeed, he knew there was some dark scheme to which he had lent himself with a view of altering the disposition of the testator’s property? All this is for you to consider, added to which Knowles was interested under one of the codicils, for his son gets an annuity of 20*l.* a-year. And then there was the matter of the quarry. This he held under a lease subject to a rent of 100*l.* a-year. The will gave him the quarry subject to the “lease,” so that he would have to pay the rent to the residuary devisee. And if this third codicil

had not been brought forward he would have had to pay that rent to the executors of John Nuttall, who, in fact, had applied for it and threatened to enforce it. He is liable to pay them the back rent if this codicil is not genuine. He is liable to pay it to Else if it is genuine. But the practical result is that since this codicil was brought forward in 1857 he has paid no rent for the quarry to any one. It is for you to consider the probability of these considerations having influenced him. As to Adams, there is no evidence that he was under the influence of corrupt motive, and no doubt, although he was poor, a poor man may have a high sense of honour and of justice. But, at the same time, if the other evidence should lead you to the conclusion that these codicils were forged, then, as we know, poverty does so expose men to temptation that, as the great master of human nature, to whom my brother Hayes so happily referred, makes one of his characters say, "My poverty and not my will consents;" and it is undoubtedly true that sometimes a man who, beyond the reach of want, would not swerve from rectitude, is led away by temptation under the pressure of necessity. It is impossible to look into the human breast. Start, then, with the presumption that men who up to a certain time have maintained an untarnished character are not likely to enter into a nefarious conspiracy to commit forgery and perjury—but you must not carry that too far; and if the evidence satisfies you that there was a forgery, and that these men were parties to it, you must not shrink from saying so by your verdict merely from the notion that it is impossible that such men should be guilty of such a crime. Now as to the effect of the three codicils taken together. The effect is that the income of John Nuttall, who by the will had the whole residuary estate, would have only 210*l.*, while the income of Else would be increased to 1,200*l.* a-year, instead of the 140*l.* a-year under the will, or 240*l.* a-year if the interlineation is genuine. Now, so much for the effect of the codicils. Then as to the internal evidence of their handwriting. The first thing that strikes me is the correspondence between the handwriting of the interlineation and the codicils, and the entire difference between that handwriting and that of the will. The difference is so marked that at first sight it appears a most unblushing forgery. But then the testator wrote different hands, and there are documents produced in which his hand more resembles that of the codicils. The man who benefits so largely by these codicils, and who is supposed to have forged them, if they were spurious, had been for many years copying for the testator, and was able to write very much like him in this more business hand in which the codicils are written. The question naturally suggests itself why the testator should have written interlineations and codicils in a hand so unlike that of his wills. But if the codicils are forged there would be an obvious reason why the forger should write them in the hand more easy to imitate. There are, however, far more important difficulties. Above all, there is the marked difference between the genuine signatures of the testator and those of the codicils. We have here a large number of the testator's checks—upwards of 70—ranging over the years from 1851 to 1856—and during the long time this trial has occupied I have become so familiar with his signature that I am sure if I were his banker, and he were now alive, I could not be imposed upon by a forged check. Further, we have had the advantage of the evidence of a skilled and experienced witness, a

gentleman of remarkable intelligence—Mr. Chabot (who was examined for several hours on Saturday and Friday);\* and although professional evidence is to be received with some distrust, yet within proper limits it is of great value ; and its great value in cases of this kind is that experience, and skill, and science detect disparities which elude the common observation and yet are more observable when pointed out. This has been the case in this instance in a very remarkable manner, and I have been struck with the disparities pointed out by Mr. Chabot. He points out, first, what is, indeed, apparent at first sight, that the testator's signature is remarkable for ease, freedom, and boldness, whereas the signatures to the codicils are constrained, and, as he says, "rather drawn than written." In short, they have all the character of mere imitation. There may be the form of the letters, but not the freedom ; there is the body, but not the spirit of the signature. [All this is, indeed, most remarkable.] Then as to the body of the codicils the evidence of Mr. Chabot was strong to show that there were certain characteristic habits of handwriting in the testator which were seen in the will but not in the codicils, and certain characteristic habits of handwriting in Else which were seen in the codicils and not in the will. [The Lord Chief Justice went into this most fully, and for upwards of an hour analyzed and applied the evidence of the "expert" with wonderful facility to the immense mass of documents which had been produced for the purpose of comparison of handwriting. Then as to the spelling, it is not mere misspelling which is material, it is the prevalence of certain peculiar habits of mis-spelling in Else's writing, and the observance of those habits in the codicil and not in the will. [The Lord Chief Justice went very fully into this, and noted such instances a "codicel," "hears," and "doughter." [These instances were not mere mistakes or omissions; they showed a prevalent and peculiar habit in Else's writing, and the presence of this habit in the codicils and not in the will was a very strong circumstance for consideration. Gentlemen, (said the Lord Chief Justice in continuation), this is a grave and most important inquiry, involving issues of the most serious character. You have given to it the attention which is due to its gravity and its difficulty. Happy will it be if you are able to exonerate by your verdict those who are implicated in this most serious charge. But if you are satisfied that the charge is well-founded, do not shrink from the honest and faithful discharge of your duty, not merely to the parties, but to society, which has a deep interest in the inquiry. You will not forget, in conclusion, the important piece of evidence that the testator a few weeks before his death said to a witness, "You will have Nuttall for my successor." If you believe that this was said it throws a strong light upon the case. What had happened to change his views and his intentions ? He had known Else for a long series of years, and had already done what was amply sufficient for him. He had in his life promoted his prospects in every way, and secured him an income from various sources, and, in addition, had provided for him in his will. Was it likely that he should have made such alterations as these, and all in such rapid succession ? The two last codicils, indeed, within six days of each other !—all three within a few months ! These are all matters worthy of consideration. As I have already said, you ought not to come to a decision adverse to these codicils without bearing in

\* Pages 45 and 46.

mind that they are attested by witnesses apparently respectable; but, on the other hand, you must consider how far their subsequent conduct and the character of their testimony may detract from their credibility. Gentlemen, the whole case is now before you. It is one, I repeat, of the gravest character and the deepest importance. It is most important that testamentary dispositions made by men should not be afterwards frustrated because there may be circumstances of doubt, or because witnesses may be unworthy of confidence. Testamentary dispositions ought to be upheld; but then we should take care that we are upholding testamentary dispositions which are genuine and true. It is for the interest of every member of society that when a case is brought before the consideration of a jury, as impugning the honesty and genuineness of testamentary documents, it should be anxiously and carefully considered. Of this I am sure, that no twelve men who could have been called upon to deal with a case of this magnitude could have done so with a more dispassionate and earnest attention, or a more manifest desire to do their duty, than you have displayed. I now commit the case to your careful consideration, and I am quite certain that your verdict will be received with satisfaction.

The delivery of this charge, which occupied nearly six hours, and was listened to with admiration by all who heard it, was not over until shortly before four o'clock.

The jury then withdrew with all the papers and documents.

They were absent for about half an hour, and then returned into court with a VERDICT FOR THE DEFENDANTS, which was received with a burst of applause, and which evidently excited the cordial approval of the great body of those who had heard the case.

## Appendix.

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### No. 1.—THE WILL OF THE TESTATOR, DATED 15TH SEPTEMBER, 1854.

I GEORGE NUTTALL of Matlock in the County of Derby Land Surveyor do hereby revoke all former wills by me made and do declare this to be my last will I APPOINT Robert Cresswell of Idridgehay in the said County of Derby Gentleman John Nuttall of London or elsewhere Stone Mason and son of my late father's deceased cousin William Nuttall late of Derby and John Marriot of Matlock aforesaid Butcher executors of this my will I bequeath my household goods and furniture plate linen china stacks crops live and dead farming stock and implements of husbandry and all my wines liquors and other consumable household stores and provisions and all my pictures and printed books also the money in my dwelling-house at the time of my death unto my housekeeper Catherine Marsden absolutely I devise the land situate on Masson in the parish of Matlock aforesaid now in the occupation of Alice Knowles and the three cottages and appurtenances situate in Holt Lane in the said parish of Matlock in the respective occupations of the said Alice Knowles Barnet Holmes and Charles Brownson and which said lands and cottages I purchased from the said Alice Knowles and her son William Knowles unto the said Alice Knowles for her life and after her death I devise the same lands cottages and appurtenances unto the said William Knowles absolutely subject nevertheless to the payment unto my executors of the sum of Eighty-one pounds (in aid of my residuary personal estate) which I hereby charge thereon with interest on the same after the rate of four pounds per centum per annum from the day of my death until paid and subject also to the payment of the legacies charged thereon by the will of Henry Knowles deceased the late husband of the said Alice Knowles or such of them as shall be then unsatisfied I DEVISE the messuage or dwelling-house lately occupied by my deceased mother and in which I now live with the outbuildings yards gardens and appurtenances thereunto belonging and several pieces or parcels of land adjoining or contiguous thereto and called Frog Meadow New Garden Bottoms or Rowson's Croft Clay Croft and Barn Croft all which said pieces of land are now in my own occupation also the messuage or dwelling-house with the outbuildings yards gardens and appurtenances thereunto belonging now in the occupation of John Else all which said premises are situate in the said

parish of Matlock and are numbered in the tithe commutation plan of the said parish with the numbers 758 759 760 762 897 898 unto the said Catherine Marsden my housekeeper for her life and from and immediately after her death I give the same messuages or dwelling-houses lands and premises unto the said John Nuttall of London absolutely. I **DEVISE AND BEQUEATH** all my estate share and interest in and to the tithes in the parish of Mottram in Longendale in the County of Chester held under lease from the Bishop of Chester and of and in the Glebe lands and premises comprised in such lease and all my estate and interest whatsoever in the rent charges for which such tithes have been commuted and all other my estate and interest under or by virtue of such lease to John Else, of Matlock aforesaid, assistant overseer of the poor of the said parish of Matlock, subject to the payment of the several annuities following that is to say, to the said John Nuttall of London or elsewhere one annuity or yearly sum of forty pounds, to Sampson Roe of Darley Bridge in the said County of Derby farmer one annuity or yearly sum of forty pounds, to Catherine Iggledon daughter of my late father's deceased cousin Thomas Nuttall one annuity or yearly sum of forty pounds, to Anne Dodson sister of the said Catherine Iggledon one annuity or yearly sum of forty pounds, and to William Nuttall of Derby brother of the before named John Nuttall of London one annuity or yearly sum of forty pounds; all which several annuities I direct shall be paid to the said respective annuitants yearly during the continuance of the lease under which I hold the said leasehold premises but shall cease on the death of the said respective annuitants although the said lease may be then subsisting. I devise my messuages or dwelling-houses farm lands tenements and hereditaments situate and being at Prass Northedge and Allished in the parish of Ashover, in the said County of Derby, and in the occupation of George Microft Roger Wall and Charles Wall, and their or some of their undertenants or undertenant (and which said devise is intended to comprise the whole of the real estate situate in the said parish of Ashover which belonged to my late grandfather John Nuttall) unto Eliza Blackshaw, now or late of Alfreton in the said County of Derby, (natural daughter of Mary Frost formerly Mary White, and which said Mary White was once servant to my said late grandfather Nuttall) and her assigns during her life for her own separate use and benefit free from the debts control or engagements of her present or any future husband; and from and after her death I give the same messuages tenements lands and real estates unto such person or persons in such parts shares and proportions and to and for such ends intents and purposes in all respects as she the said Eliza Blackshaw notwithstanding coverture shall in and by her last will direct and appoint; and in default of such direction or appointment, and so far as any such direction or appointment shall if incomplete not extend, I devise the same messuages or tenements lands and real estates unto the said John Nuttall of London absolutely. I **DEVISE** my messuages or dwelling-houses farm lands tenements and hereditaments situate and being at Hardwick and Twitch Nook in the said Parish of Ashover and in the respective occupations of William Sims Roger Wall and Charles Wall and their or some of their undertenant or under-

tenants and lately the property of Mr. Samuel Outram, unto Miss Maria Travis of Matlock aforesaid assistant post mistress absolutely. I DEVISE my messuages or dwelling-houses farm lands tenements and hereditaments situate and being at and near Brockhurst in the said Parish of Ashover and in the occupation of Samuel Holmes and lately purchased by me from Mr. George Smith unto Sarah daughter of the said Samuel Holmes and late servant to my said deceased mother absolutely. I DEVISE my messuages tenements lands and all other my real estate situate in the Parish of Brampton, in the said County of Derby, unto my cousin Stephen Melland of Brampton aforesaid absolutely. I DEVISE all my messuages, tenements, lands, and all other my real estate situate in the Parish of Bonsall in the said County of Derby, and also all those my lands and hereditaments situate in the Parish of Matlock aforesaid, which I purchased of the Duke of Devonshire and Mr. Andrew Duncan, and which said last-named premises so situate in the Parish of Matlock are now in the occupation of John Spencer; and also my messuages tenements lands and all other my real estate situate in the Township of Wensley and Snitterton in the Parish of Darley in the said County of Derby, (except such part or parts thereof which I purchased from the devisees of the late Samuel Simpson Esquire and which is and are now in the occupation of James Marriott and his undertenant and undertenants) unto Elizabeth Sheldon formerly Elizabeth Britland now or late of Bonsall aforesaid wife or widow of John Sheldon and late servant to my said deceased mother and subject to the yearly payment of One hundred pounds to the beforenamed John Else, Also Fifty } pounds yearly to my said housekeeper Catherine Marsden }

G. N.  
her assigns during her life for her own separate use and benefit, free from the debts control or engagements of her present or any future husband; and from and after her death I give the same messuages tenements lands and real estates unto such person or persons in such parts shares and proportions and to and for such ends intents and purposes in all respects as she the said Elizabeth Sheldon notwithstanding coverture shall in and by her last will direct and appoint; and in default of such direction or appointment and so far as any such direction or appointment shall if incomplete not extend, I devise the same messuages or tenements lands and real estates unto the said John Nuttall of London absolutely. I give to the several persons next hereinafter named for their respective lives the several annuities or yearly sums of sterling money which follow their respective names, that is to say, to the said Catherine Marsden my housekeeper the sum of two hundred pounds, to Sarah Marsden the elder mother of my said housekeeper the sum of twenty pounds, to Sarah Marsden the younger sister of my said housekeeper the sum of twenty pounds, to my tenant John Potter of Wensley aforesaid the sum of forty pounds, to Miss Elizabeth Robinson of Hope in the said County of

and to Alfred Richards of Matlock aforesaid Professor of Musick the sum of Thirty pounds—G. N.  
Derby the sum of thirty pounds, and I charge the several last mentioned annuities upon and make the same payable out of my residuary real estate hereinafter devised; and I direct that such last mentioned annuities shall or yearly sums shall be paid half yearly the first half yearly payment thereof respectively to be made on the expiration of six calendar months after my death and that such last men-

tioned annuitants shall respectively have the same powers and remedies by distress or otherwise for recovering their respective annuities when in arrear as landlords have for recovering rent in arrear reserved on common demises; and I also direct that if any annuitant named in this my will shall at the time of my death be a married woman such annuitant shall receive hold and enjoy her annuity for her own separate use and benefit free from the debts control or engagements of her then or any after taken husband, and that the receipt or receipts of such annuitant and of any married woman taking under my will a separate estate in any part of my said real and personal estates shall alone notwithstanding coverture be a good and effectual discharge to the person or persons paying or being liable to pay the rents profits and income of such part of my real and personal estates as is or are included in any gift or devise made for the separate use of any married woman as aforesaid; and I authorise and empower any married woman taking under this my will a separate estate in any part of my said real estate to distrain for rents in arrear and to manage and superintend such real estate and to make do and execute such acts matters and things for the management and superintendence thereof without the concurrence and consent of her husband and as fully and effectually to all intents and purposes as if she were sole and unmarried; and subject to and charged with the payment of the said last-mentioned annuities and to the powers and remedies for receiving and recovering the same, and subject also to the privilege hereinafter given to Job Knowles of Matlock aforesaid to work the stone quarry hereinafter referred to I devise the residue and remainder of my real estates whatsoever and wheresoever unto the said John Nuttall son of my late fathers deceased cousin William Nuttall absolutely. I give unto the said Job Knowles of Matlock aforesaid, the power and privilege of working for his own use and benefit the stone quarry situate in the Parish of Matlock aforesaid and now in the occupation of Sir Joseph Paxton and Job Knowles during his life; and I direct that the power or privilege thus given to the said Job Knowles to work the said quarry shall extend to the land and ground comprised in the following description namely commencing at the easterly end in a certain piece or parcel of land situate in the said Parish of Matlock No. 1225 in the said plan made for the commutation of the tithes of the said Parish at the Railway Arch and occupation road leading to Megdale and continuing from thence in a westwardly direction to the Iron Railway Bridge over the River Derwent and extending in depth in a southwardly direction forty yards from and parallel with the Southwardly rail of the Manchester Matlock and Midlands Junction Railway through or across the said land No. 1225 and into the pieces or parcels of land numbered in the said plan 1234, 1235 and 1238 nevertheless the power or privilege hereinbefore contained shall not authorise or empower the said Job Knowles to injure destroy or interfere with the said occupation road leading to Megdale aforesaid. And I declare that the said power or privilege of working the said quarry is given to the said Job Knowles subject to any lease or demise to which the said quarry may at the time of my death be subject and shall take effect only upon the termination of any such lease or demise. I devise all real trust and mortgage estates vested in

me at the time of my death unto my executors hereinbefore named subject nevertheless to the trusts and equities affecting the same respectively. I direct my executors to convert into money such part of my residuary personal estate as shall not consist of money and thereout to pay all my debts funeral and testamentary expenses as soon as may be after my death and to divide the remainder of the monies arising from such conversion and all other monies forming part of or belonging to my residuary personal estate unto and amongst my said Cousin Stephen Melland my cousin the Revd. William Melland, William Hall of Hackney near London Surgeon Mr. Manlove of Brampton aforesaid manufacturer of thread my cousins Emma Parkes of New Brighton Stephen Holmes of Brampton aforesaid Samuel Holmes of Darley aforesaid Dr. Henry Holmes of London and George Holmes now or late of Leicester Charles Young of Matlock stone mason, the said Elizabeth Sheldon, my labourers Robert Gregory George Knowles Thomas Buxton and Job Gregory Joseph Janney now or late of Nice formerly of Matlock my late servant Mary Shaw niece of M<sup>r</sup> Shaw Plumber of Belper in the said County of Derby, Sarah White of Matlock housekeeper to the said Alfred Richards, the said Alfred Richards, each of my said Executors Robert Cresswell John Nuttall and John Marriott, the said Job Knowles, John Nuttall of Mansfield Tinman son of my late fathers deceased cousin John Nuttall, each of the three children of my late fathers deceased cousin Samuel Nuttall late of Godley in the said County of Chester namely Thomas Nuttall James Nuttall and Isabella Greenhatch each of the five children of my late fathers deceased Cousin Thomas Nuttall late of Hathersage in the said County of Derby namely John Nuttall Thomas Nuttall Samuel Nuttall Alfred Nuttall and George Nuttall and each of the four children of my late fathers deceased natural child Sidney Raynes in equal shares and proportions and in the schedule hereunder written I have set forth the particulars of the debts now due and owing to me but I direct that such Schedule shall not in any way restrict or limit the operation of the residuary bequest hereinbefore contained but that all debts due to me whether enumerated in such Schedule or not, and all debts specified therein but which may be hereafter paid in or which may be invested in other securities shall be included in such residuary bequest. In witness whereof I have hereunto set my hand the fifteenth day of September in the year of our Lord one thousand eight hundred and fifty four

Signed and acknowledged by the said George Nuttall the testator as and for his last will in the presence of us present at the same time who in his presence at his request and in the presence of each other have hereunto subscribed our names as witnesses

GEORGE NUTTALL

W<sup>m</sup> GREEN } Clerks to Mess<sup>r</sup> Milnes & Newbold  
JAMES GELL }

Sol<sup>r</sup>

Matlock

## SCHEDULE ABOVE REFERRED TO

Name	Residence	Nature of Security	Amount
			£ s. d.
Alsop John - -	Birmingham -	Mortgage - - -	600 " "
Boden George - -	Matlock - -	Mortgage - - -	400 " "
Brailsford William - -	Matlock - -	Mortgage - - -	84 " "
Ellis William - -	Matlock - -	1st and 2nd Mortgages	320 " "
Janney Joseph - -	Nice in Italy -	Mortgage and I O U -	108 " "
Knowles Alice - -	Matlock - -	Absolute conveyance of her property in Matlock - - -	81 " "
Knowles George - -	Brampton - -	Note of Hand - - -	12 19 9
London and N <sup>h</sup> West- ern Railway Com- pany - - - -	- - - -	Debenture Bond - -	2000 " "
Ludlam Thomas - -	Matlock - -		150 " "
Marriott James, Sen <sup>r</sup> -	Matlock - -	Mortgage - - -	100 " "
Midland R <sup>J</sup> Comp <sup>y</sup> -	- - - -	Debenture Bond - -	2000 " "
Richards Alfred - -	Matlock - -	I.O.U. - - -	19 " "
Simpson William - -	Ashover - -	Mortgage - - -	700 " "
Slack Edward - -	Wirksworth -	Mortgage - - -	525 " "
Spencer Timothy - -	Matlock - -	Mortgage - - -	200 " "
Wall George - -	Riber on Matlock	Mortgage and Note -	400 " "
Wilmot T. S. - -	Whittington -	Note of Hand - -	79 " "
Wilmot William - -	Brackenfield -	Mortgage & Note of hand - - -	250 " "
My share of Mothers	funded property about		1200 " "

WM. GREEN  
JAMES GELL

GEORGE NUTTALL

No. 2—THE FIRST CODICIL, DATED 27th OCTOBER, 1855.

WHEREAS I George Nuttall, of Matlock Land Surveyor have made and duly executed my last will in writing, bearing date the 15th day of September, 1854, now I do hereby declare this present writing to be a codicel to my said will and I do direct the same to be annexed thereto and to be taken as a part thereof. AND WHEREAS I did in and by my said will give unto Elizabeth Sheldon of Bonsall all my property situate in Wensley and Snitterton in the Parish of Darley subject to two Yearly payments as therein stated to John Else and Catherine Marsden

except that portion of my property in the occupation of James Marriott also the land on Masson in the Parish of Matlock in the occupation of John Spencer. Now I DO HEREBY REVOKE, CANCEL AND MAKE VOID THE SAME, And I now give the same unto John Else and Catherine Marsden as follows. I give and devise unto the said John Else his *hears* and assigns for ever all the Lands, Buildings and hereditaments now in the Occupation of Robert Sybray, John Potter and Thomas Haynes subject to the following payments that is to say, to pay an Annuity or yearly sum of Twenty pounds unto Thomas Marsden, George Marsden, William Marsden and John Marsden brothers to my housekeeper each during their natural lives, Also to pay one other annuity or Yearly sum of fifty pounds unto my friend James *Clifford* Newbold during his natural life, I give the remainder of my property in Wensley and Snitterton save and except such portion as is in the Occupation of James Marriott unto my housekeeper Catherine Marsden for her life and then to John Else absolutely, I now give the farm at Ashover in the Occupation of Samuel Holmes and which in my said Will is given to Sarah Holmes his *daughter* but who is now dead to Thomas Newbold son of the before named James *Clifford* Newbold absolutely, I ALSO GIVE to the before named John Else the three fields of land in Darley now in the Occupation of John Potter, Charles Young, William Marsden John Marsden and George Marsden absolutely And I also nominate and appoint the said John Else one of my *Executers* along with Robert Cresswell, John Marriott and John Nuttall, AND I do hereby ratify and *conferm* my said will in all the other particulars thereof I the said George Nuttall have to this *codicel* set my hand this twenty seventh day of October 1855.

Signed, published and declared by the said  
testator, George Nuttall as and for a *codicel*  
to be annexed to his last Will and testamen-  
and to be taken as part thereof in the *presences*  
of us

} GEORGE NUTTALL

THOMAS BUXTON  
JOB GREGORY

No. 2a.—THE EPITOME OF THE WILL AND FIRST CODICIL.

Exors — R. Cresswell. Jn<sup>o</sup> Marriott. Jn<sup>o</sup> Nuttall. J. E. by  
*cod<sup>l</sup>*

Household Goods &c to C. M. aby.

Alice Knowles propt<sup>r</sup> to Alice Knowles for life rem<sup>r</sup> to W<sup>m</sup> K.  
Own House, Jn<sup>o</sup> Elses, some land adg<sup>s</sup> to 3 for life and then  
J. N. absolutely.—

[Note.—That portion of the Epitome *not* in italics is in the undisputed hand-writing of the testator. The parts *in italics* were alleged by the defendants to be forgeries.]

Mottram as follows that is to J E paying to

John N	40
S Boe	40
Iggledon	40
Dodson	40
W <sup>m</sup> N.	40
	—
	200
	—

Prass Northedge & Allished to E. B.

\* { Hardwick & Twitch Nook } to M. T.  
 { Brockhurst (S. H.) } to T Newbd  
 Brampton S. M.

Bonsall, that p<sup>t</sup> of Matlock which John Spencer holds  
 also all Wensley & Snitterton except that purchased of Simpson devisees to 5  
 absolutely,—for life &c.

Annuites for life to 3	200
John Potter	40
Eliz Robinson	30
Richards	30
	—
	300
	—

3 fields in Darly

to J. E.

Residue of Real subject as aforesaid to J. N.

Stone Quarry to J. K. for life

Trust & mortgage Estates to Exors.

Residue of Personality to be converted into mony &

divided=amongst

	Jn <sup>o</sup> Nuttall M <sup>d</sup>	Alterations in Codicil
Stephen Melland		
W <sup>m</sup> Hall	Sidney Son	
Mr Manlove	do do	Wensley & Snitterton as left to 5
Rev <sup>d</sup> W <sup>m</sup> Melland	do daughter	now to J E. and C. M.
Emmar Parke	do daughter	J E paying to
Stephen Holmes	Tom Nuttall	T. M 20
Samuel Holmes	Jem Nuttall	G. M 20
Henry Holmes	Isabella	Sybraj to J. E. W. M 20
George Holmes	Ja <sup>d</sup> Nuttall	Potter rem <sup>r</sup> to J M 20
Charles Young	Tho Nuttall	Haynes Kit. J. C. N 50
5	Sam <sup>l</sup> Nuttall	
R Gregory	A <sup>d</sup> Nuttall	
George Knowles	Geo Nuttall	
The Buxton		

\* These brackets and the cancelling lines through the initials S. H. (*Sarah Holmes*) it was admitted, were made by the testator, and are referred to in the summing up of the Lord Chief Justice at p. 64.

Job Gregory	36)8000(222l.
Josh Janney	<u>72</u>
Mary Shaw	<u>800</u>
Sarah White	<u>72</u>
Richards	<u>80</u>
R Cresswell	<u>72</u>
Jn <sup>o</sup> Nuttall	<u>8</u>
Jn <sup>o</sup> Marriott	About <u>200</u> each
Job Knowles	

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No. 3.—THE SECOND CODICIL, DATED 6TH JANUARY, 1856.

WHEREAS I George Nuttall of Matlock Land Surveyor have made and duly executed my last Will in writing bearing date the fifteenth day of September 1854, Also a Codicil bearing date the twenty seventh day of October 1855, Now I hereby declare this present writing to be a second Codicil to my said will, and I do direct the same to be *annexed* thereto; and to be taken as a part thereof AND whereas I did in and by my said will devise the Messuage or dwellinghouse lately occupied by my deceased mother and in which I now live with the outbuildings yards gardens and appurtenances thereunto belonging and several pieces or parcels of land adjoining or *contiguas* thereto and called Frog meadow New Garden Bottoms or Rawsons Croft Clay croft and Barn croft All which said pieces of land are now in my own occupation ALSO the Messuage or dwelling house with the out-buildings yards gardens and appurtenances thereto belonging now in the occupation of John Else, all which said premises are situate in the said Parish of Matlock and are *numbred* in the Tithe Commutation plan of the said parish with the numbers 758, 759, 760, 762, 897, 898, unto Catherine Marsden my housekeeper for her life AND from and *immediatley* after her death I gave the same unto John Nuttall, Now I HEREBY REVOKE AND MAKE VOID THE SAME so far as giving the same Messuages lands and premises unto John Nuttall, And I now give the same from and immediately after the death of my said housekeeper Catherine Marsden unto John Else of Matlock Assistant Overseer absolutely, I give and devise unto the said John Else his heirs and *assignes* for ever all my messuages or dwellinghouses lands tenements and hereditaments at or near to Matlock Bridge which I purchased from William Brodhurst Esquire of the Friary, Newark and *numbred* in the Tithe Commuation plan of the said parish 1129, 1131, 1132, 1133, 1134, 1138, 1140, 1152, 1156, 1174, 1145, 1117, 1118, and 1119, and now in the occupation of myself, Job Knowles, George Hawley and John Marriott or his under tenants, subject to the following payments that is to say to pay an Annuity or yearly sum of twenty pounds unto George Knowles the son of Job Knowles of Matlock Bank, Also to pay one other annuity or yearly sum of twenty pounds unto Sarah Marsden the elder Mother to my housekeeper Catherine Marsden, Also to pay one other annuity or yearly sum of thirty pounds unto Alfred Richards of Matlock Professor of Musick, during their natural lives, These two last named Annuities are in my said

Will directed to be paid out of my residuary real estate given to John Nuttall. Now I direct that my residuary real estate shall not stand charged with the said two Annuities given to Sarah Marsden and Alfred Richards but the same shall be payable out of the estate given by me to the said John Else as above stated, I also give unto the said John Else the field of land with the cowhouse thereon now in the Occupation of William Ellis and *numbred* in the *Tith Commutation* plan 901, absolutely, AND I do hereby ratify and confirm my said Will and codicil in all other particulars thereof I the <sup>said</sup> George Nuttall have to this second codicil set my hand this sixth day of January 1856.

Signed and acknowledged by the said George Nuttall the Testator as and for a second Codicil to be annexed to his last will and testament and to be taken as part thereof in the presence of us present at the same time who in his presence at his request and in the *prensence* of each other have hereunto subscribed our names as Witnesses.

JOB KNOWLES  
JOHN ADAMS

}  
GEORGE NUTTALL,

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No. 4.—THE THIRD CODICIL, DATED 12TH JANUARY, 1856.

WHENCEAS I George Nuttall of Matlock Land Surveyor have made and duly executed my last Will in writing bearing date the fifteenth day of September 1854; Also a codicil bearing date the twenty seventh day of October 1855 also a second codicil bearing date the sixth of January 1856, Now I hereby declare this present writing to be a third Codicil to my said Will and I do direct the same to be *annexed* thereto, and to be taken as a part thereof. AND whereas I did in and by my said Will devise all my messuages tenements lands and all other my real estate situate in the parish of Bonsall in the County of Derby unto Elizabeth Sheldon now or late of Bonsall aforesaid, Now I do hereby revoke cancel and make void the same AND I now give and devise the said estate unto John Nuttall of London or elsewhere Stone Mason subject to the yearly payment of Thirty pounds unto the said Elizabeth Sheldon during her natural life, AND whereas I did in and by my said Will devise my messuages or dwellinghouses farm lands tenements and hereditaments situate and being at Prass Northedge and Allished in the parish of Ashover in the said County of Derby and in the occupation of George Mycroft Roger Wall and Charles Wall and their or *sum* of their undertenants or undertenant (and which said devise is intended to comprise the whole of the real estate situate in the said parish of Ashover which belonged to my late Grandfather John Nuttall) unto Eliza Blackshaw of Alfreton, Now I do hereby revoke cancel and make void the same AND I now give and devise the said estate unto the said John Nuttall of London or elsewhere Stone Mason subject to the yearly payment of Thirty pounds

unto the said Eliza Blackshaw during her natural life Also one other payment of Thirty pounds yearly unto my housekeeper Catherine Marsden during her natural life, AND whereas I did devise the residue and remainder of my real estates unto the said John Nuttall chargeable with the following yearly payments that is to say, to my housekeeper Catherine Marsden Two hundred pounds, to Sarah Marsden the younger the sum of Twenty pounds, to my tenant John Potter of Wensley Forty pounds, to Miss Elizabeth Robinson of Hope the sum of Thirty pounds, Now I hereby revoke and make void the same. AND I now give and devise the residue and remainder of my real estates (except my estate at Hope in the said County of Derby which is hereafter mentioned) chargeable with the before named payments unto John Else of Matlock, Assistant Overseer absolutely, the yearly amount given to Sarah Marsden the elder and to Alfred Richards named in my said will are charged upon estates given to the said John Else in my codicil dated January the sixth 1856, Now I direct that my Executors shall as soon as convenient sell my real estate situate at Hope in the said County of Derby, and the money arising from such sale after deducting all legal and necessary expences attending such sale, to be equally divided share and share alike *amongst* the brothers and sisters of my said housekeeper Catherine Marsden, the said Catherine Marsden to be included, namely Thomas Marsden, George Marsden, William Marsden, John Marsden, Sarah Marsden, the said Catherine Marsden and Eliza Else the wife of the before named John Else, AND I do hereby ratify and confirm my said Will and Codicils in all other particulars thereof I the said George Nuttall have to this third Codicil set my hand this twelfth day of January 1856.

Signed and acknowledged by the said George Nuttall the Testator as and for a third Codicil to be annexed to his last Will and Testament and to be taken as part thereof in the presence of us present at the same time who in his presence at his request and in the presence of each other have hereunto subscribed our names as witnesses

JOHN ADAMS

JOB KNOWLES

} GEORGE NUTTALL,

#### No. 5.—THE WILL OF LUKE WILSON.

AS COPIED BY THE PLAINTIFF ELSE, AND PUT IN EVIDENCE WITH OTHER LIKE DOCUMENTS AT THE TRIAL, PAGE 29.

I, LUKE WILSON of Matlock in the County of Derby hereby revoke all Wills by me at any time heretofore made and declare this to be my last Will.

I DIRECT that all my just debts funeral and testamentary expences be paid by

my Executors out of my personal Estate and if that be insufficient then I direct that the Rents first becoming due after my death from all my real estate be appropriated in aid of such personality *untill* all my just debts funeral and testamentary Expences are fully paid and satisfied.

All that field numbered two thousand two hundred and fourteen in the Tithe Commutation Survey for the Parish of Matlock and called Sallowell containing three acres three roods and three perches and now in the occupation of James Gregory.

I GIVE to John Else of Matlock Assistant Overseer and John Blackwell also of Matlock Miller in trust for the following uses that is to say to let the same for the best price or rent that can be reasonably obtained and to pay the first year's rent which *they* may receive (after the payment of my just debts) unto my wife Elizabeth Wilson, and to pay the future rent as *they* may receive the same unto my two Sons in law William Spencer and Robert Battison for and during the term of their natural lives in the following proportions that is to say Five pounds yearly to Robert Battison and the remainder of such Rent to William Spencer and that from and after the death of either of my said Sons in law I direct that share of rent so given to him shall be paid by my said Trustees to or for the benifit of the Children of my *Doughter* the Wife of such Son in law, which may so die and upon the death of the survivor of my said Sons in law (provided the *youngist* of the Children of my *doughters Marther* Spencer or Ann Battison be then of the age of Twenty one years) I DIRECT that my said Trustees shall sell my said field for the best price that can be obtained for the same and after payment of all expences and for their *own* loss of time I GIVE AND BEQUEATH one hundred pounds of such purchase money equally unto and amongst such of the children of my late *doughter* Ann Battison as may be then living share and share alike for their own use and benefit And the remainder of such purchase money I GIVE AND BEQUEATH equally unto and amongst such of the Children of my late *Doughter Marther* Spencer as may be then living share and share alike for their own use and benefit as and when such children of either of my said *doughters* shall severally and respectively attain *there* several and respective ages of twenty one years, And if it shall so happen that all the Children of my said *doughter* Ann Battison shall die before their father Robert Battison then I give the share of the purchase money as aforesaid to which *they* would have been entitled if alive unto my two Sons William Wilson and Luke Wilson share and share alike. And if it shall so happen that all the children of my said *doughter Marther* Spencer shall die before their father William Spencer then I give the share of the purchase money as aforesaid to which *they* would have been entitled if alive unto my said Sons William Wilson and Luke Wilson share and share alike.

SUBJECT to the payment of the sum of Two pounds Yearly to my said Wife Elizabeth Wilson which I hereby bequeath to her, I GIVE AND DEVISE all that my dwelling house situate in Matlock Town, together with the Garden, Cowhouse and appurtenances near thereto and now in the occupation of my said son William Wilson; and also together with all those my Closes or pieces of land situate on

Riber Hill Side, in the parish of Matlock aforesaid, which are now also in the occupation of my said Son William Wilson, together with a field in the Side Lane which I purchased from Henry Ludland now in my own occupation, I GIVE AND DEVISE the same unto my said Son William Wilson, his heirs and assignes for ever.

I GIVE AND BEQUEATH to my Son Luke Wilson an annuity or yearly sum of Ten pounds, payable to him for the life of my said Wife out of the residue of my real Estate, hereafter devised to my said Wife,

AND SUBJECT as aforesaid to the payment of the yearly sum of Ten pounds to my said Son Luke, and also subject to finding a home for my said Son Luke so long as he continues single, I GIVE AND DEVISE the remainder of my real Estate, consisting of the house in which I now live and the appurtenances, together with a dwelling adjoining thereto, and the appurtenances in the occupation of Joseph Taylor, also together with a field in my own occupation near Matlock Town Head which I purchased from Benjamin Hill, and also together with the Public House, outbuildings, Yards, Gardens, and land adjoining and also together with a field in the Side Lane called Sallowell or Pump Close, and which said last mentioned premises are in the occupation of John Rouse,

I GIVE AND DEVISE the same unto my said Wife Elizabeth Wilson for and during the term of her natural life, and from and immediately after her death I GIVE AND DEVISE the same to my said Son Luke for and during the period of his natural life, and from and immediately after the death of my said Son Luke, provided my said Wife be then dead, I GIVE AND DEVISE the same to such person or persons as my said Son Luke by his last will may devise the same, AND the heirs and assignes of such person or persons for ever.

I GIVE AND BEQUEATH all my personal Estate, of whatsoever nature the same may be, subject as before named to the payment of my debts, funeral, and testamentary expenses to my said Wife, Elizabeth Wilson, absolutely.

I NOMINATE AND APPOINT the before mentioned John Else and John Blackwell Trustees and Executors of this my Will, and I authorize and empower them to pay themselves all expences incurred in carrying this Will into effect, and also all reasonable charges for their loss of time.

I PUBLISH AND DECLARE this to be my last Will, as witness my hand this Twenty second day of May in the year of our Lord one thousand eight hundred and fifty three.

SIGNED PUBLISHED AND DECLARED by the  
Testator Luke Wilson as and for his last  
Will in the presence of us who in his pre-  
sence, at his request and in the presence  
of each other have subscribed our names  
as witness

JOSEPH SMITH  
JOSEPH TAYLOR.

LUKE WILSON

## No. 6.—LIST OF MISSPELLINGS.

IN DOCUMENTS PUT IN EVIDENCE BY THE DEFENDANTS.\*

## I.—GEORGE NUTTALL'S WRITING.

Document.	Word.
Stephen Melland's letters - - - -	<i>strength for strength.</i>
Ditto ditto - - - -	<i>rabbitts „ rabbits.</i>
16 letters of George Nuttall to Mr. Thelen	No mistakes.
30 ditto ditto to John	
Cutts and Lucas & Cutts - - - -	<i>untill for until.</i>
Will of James Walker - - - -	No mistakes.
Will of William Adam - - - -	No mistakes.
11 letters of George Nuttall to Robert	
Bromley - - - -	No mistakes.
24 ditto ditto to Joseph	
Gratton - - - -	<i>chage for charge.</i>
28 ditto ditto to the Tithe	
Commutation Office - - - -	<i>seperate for separate, four times.</i> <i>stile for style.</i>

## II.—JOHN ELSE'S WRITING.

Document.	Word.
Luke Wilson's will - - - -	<i>untill for until.</i>
"	<i>numbred for numbered.</i>
"	<i>commuatation for commutation.</i>
"	<i>survay for survey.</i>
"	<i>benifit for benefit.</i>
"	<i>thay for they, four times.</i>
"	<i>doughter for daughter, six times.</i>
"	<i>surviver, for survivor.</i>
"	<i>youngist for youngest.</i>
"	<i>Marther for Martha, three times.</i>
"	<i>owen for own.</i>
"	<i>benefit for benefit.</i>
"	<i>there for their.</i>
"	<i>assignes for assigns.</i>
"	<i>witniss for witness.</i>
Letters to different persons - - - -	<i>pleas for please.</i>
"	<i>verey for very.</i>
"	<i>signe for sign.</i>

Document.	Word.
Letters to different persons	stope for stop.
"	enquire for enquire.
"	oblig for oblige.
"	receive for receive.
"	should for should.
"	her for here.
"	possable for possible.
"	except for accept.
"	sam for same.
"	receipt for receipt.
"	property for property.
"	wate for wait.
"	Dirwint for Derwent.
"	coerce for course.
"	adjoing for adjoining.
"	concurd for concurred.
"	gitting for getting.
"	shuld for should.
"	clame for claim.
"	includs for includes.
"	where for were, twice.
"	his for is.
"	tennancy for tenancy.
"	Januay for January.
"	tooke for took.
"	their has for there have.
"	diffrent for different.
"	annutant for annuitant.
"	remitt for remit.
"	hear for here, twice.
"	westcote for waistcoat.
"	waiscote for ditto
"	waistcote for ditto
"	meashur for measure.
"	shure for sure.
"	cote for coat.
"	ware for wear.
"	comming for coming.
"	arres for arrears.
"	posseesion for possession.
"	Fridy for Friday.

Document.	Word.
Letters to different persons . . . . .	<i>propositon</i> for <i>proposition</i> . usuſl for <i>usual</i> .
"	wether for <i>whether</i> .
"	Committe for <i>Committee</i> , twice.
"	likly for <i>likely</i> .
"	pregudicial for <i>prejudicial</i> .
"	weather for <i>whether</i> .
"	obediant for <i>obedient</i> .
"	verry for <i>very</i> .
"	collector for <i>collector</i> .
County Court Returns . . . . .	<i>Elizaboth</i> for <i>Elizabeth</i> <i>doughter</i> for <i>daughter</i> , eighteen times. <i>drughter</i> for <i>ditto</i> <i>gon</i> for <i>gone</i> , three times. <i>shaw caws</i> , three times <i>shaw cause</i> } for <i>shows cause</i> <i>show cause</i>
"	<i>personlly</i>
"	<i>pearsonally</i> , seven times } for <i>personally</i>
"	<i>personaly</i> , three times }
"	<i>personqolley</i> .
"	<i>Michel</i> for <i>Michael</i> , seven times.
"	<i>Marriah</i> for <i>Maria</i> .
"	<i>Januay</i> for <i>January</i> , fourteen times.
"	<i>Margret</i> for <i>Margaret</i> .
"	<i>Stiphon</i> for <i>Stephen</i> .
"	<i>Dorthy</i> for <i>Dorothy</i> .
"	<i>summond</i> for <i>summoned</i> , seven times.
"	<i>partey</i> for <i>party</i> .
"	<i>denys</i> for <i>denies</i> .
"	<i>Fredrick</i> for <i>Frederick</i> .
"	<i>Darly</i> for <i>Darley</i> , nine times.
"	<i>Wensly</i> for <i>Wensley</i> .
"	<i>gon too</i> for <i>gone to</i> .
"	<i>Administrator</i> for <i>Administrator</i> , 3 times
"	<i>Elizabeth</i> for <i>Elizaboth</i> .
"	<i>ordred</i> for <i>ordered</i> .
"	<i>Februy</i> for <i>February</i> , four times.
"	<i>Marther</i> for <i>Martha</i> .
"	<i>Fanney</i> for <i>Fanny</i> .

Document.	Word.
County Court Returns - - - - -	<i>pursons</i> for persons.
"	<i>Fredrick</i> for <i>Frederick</i> .
"	<i>Carline</i> for <i>Caroline</i> .
"	<i>thees partys lives</i> for <i>these parties live</i> .
"	<i>Mersey</i> for <i>Mercy</i> .
George Statham's will - - - - -	<i>daughter</i> for <i>daughter</i> , five times.
Samuel Statham's will - - - - -	<i>unmarred</i> for <i>unmarried</i> .
"	<i>assignes</i> for <i>assigns</i> .

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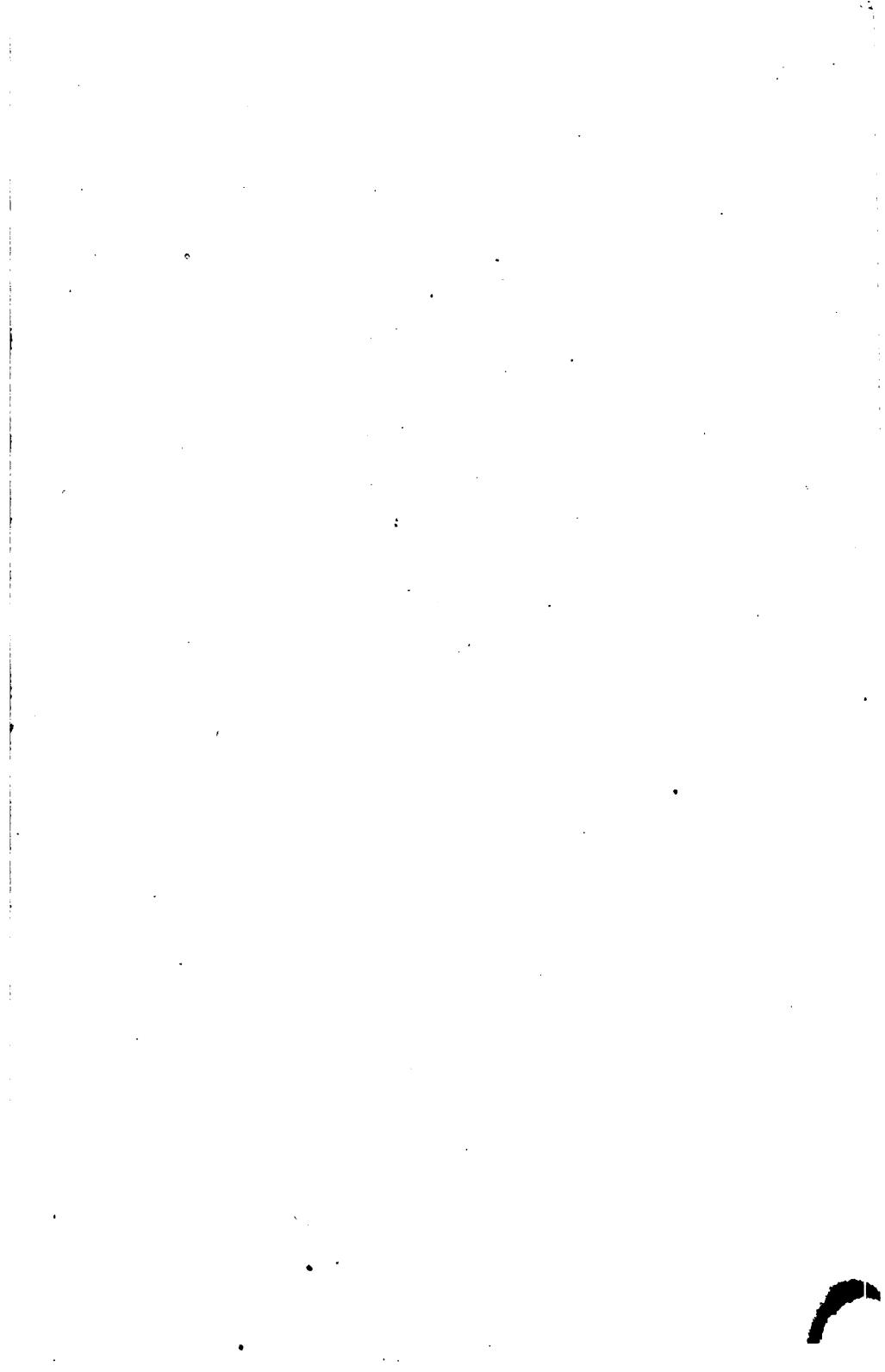
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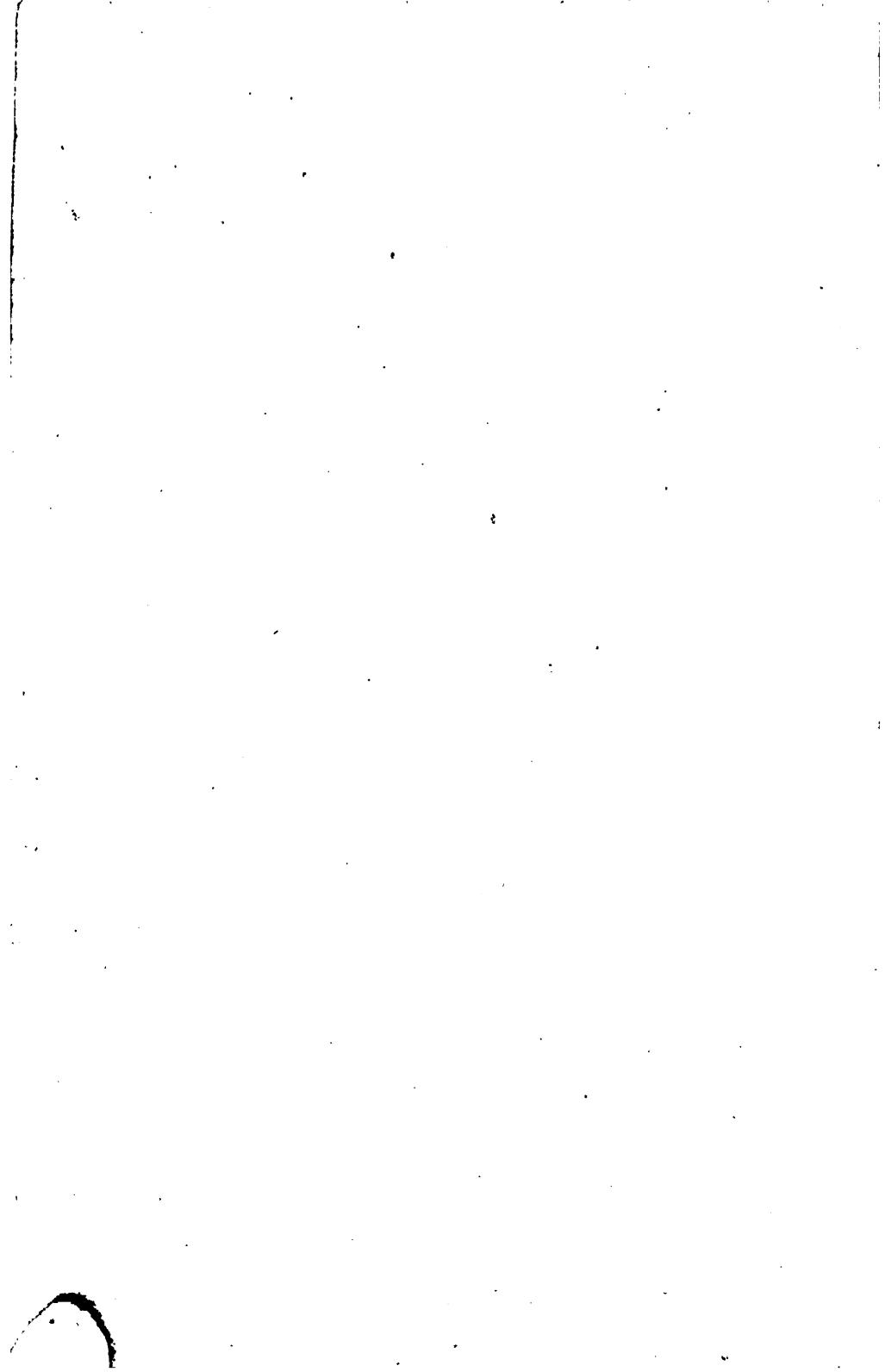
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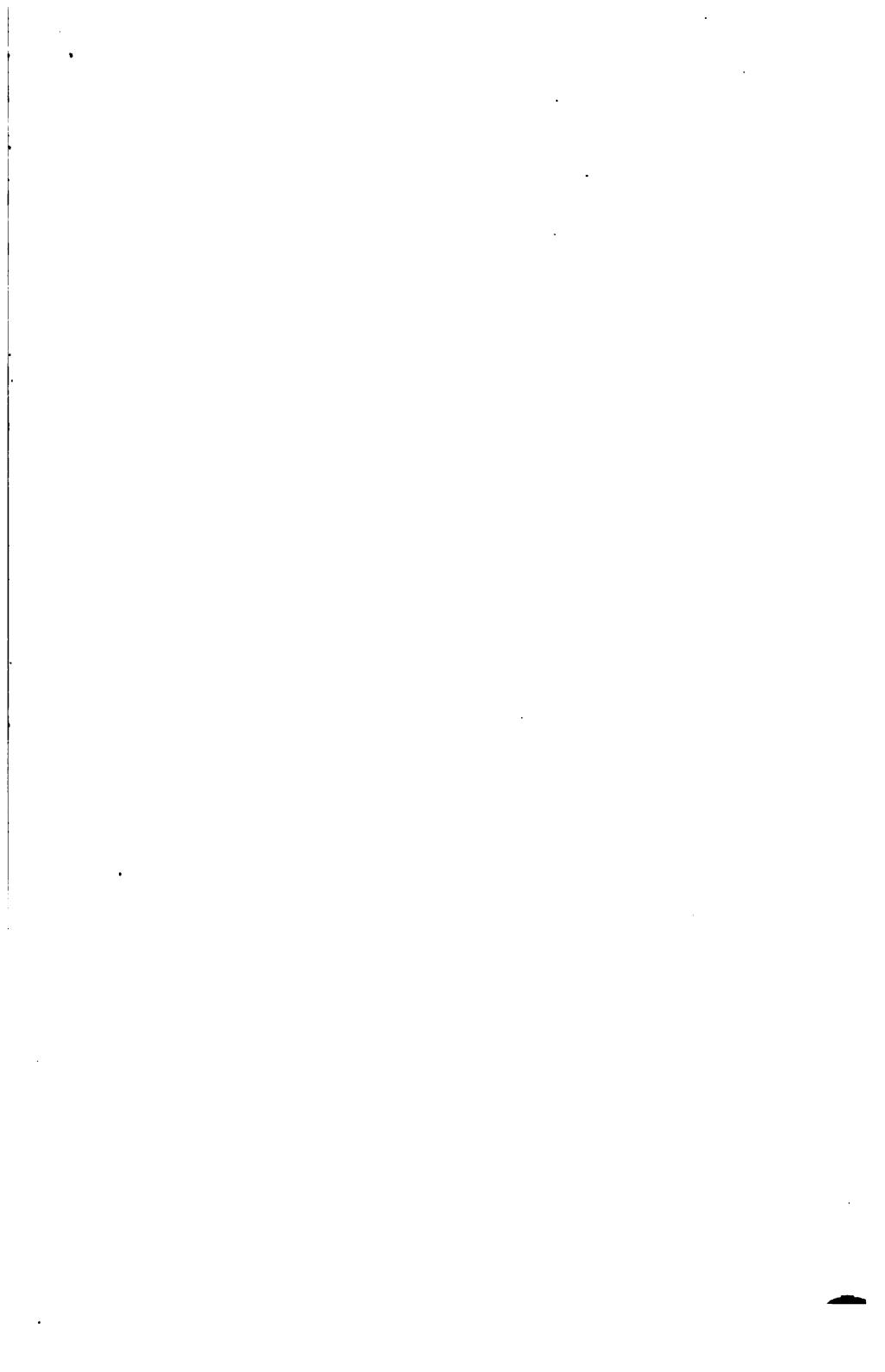
Page 32, in line 28, "invariably" should be "frequently."

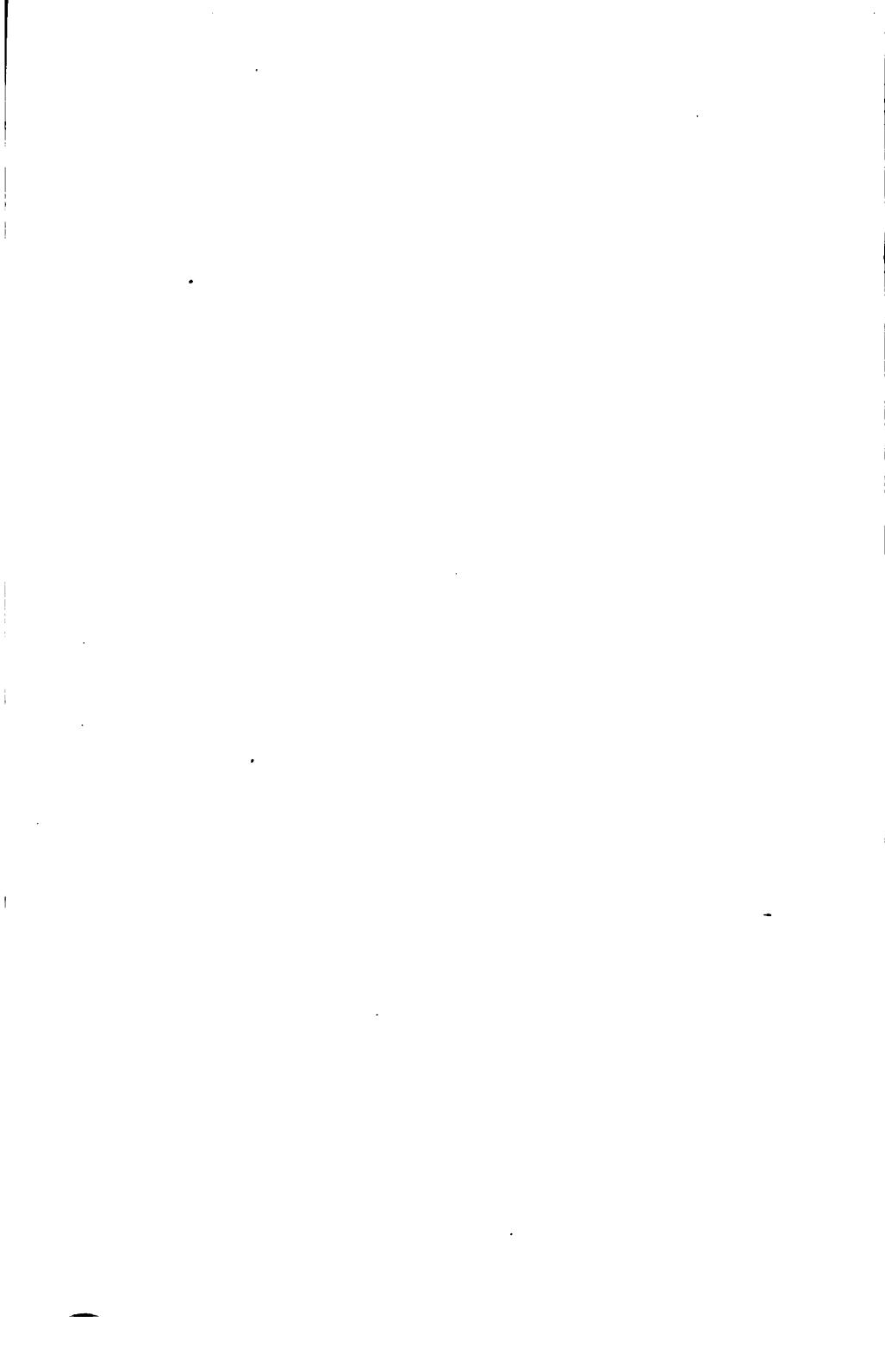
,, 46, in lines 6 and 8 from the bottom, "Adam" should be "Adams."

Richard Keene, Printer by Steam Power, Derby.













*EHD*

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